

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ZEXI LI

Plaintiff/Moving Party

- and -

CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5,
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JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60

Defendants/Responding Parties

Proceeding under the *Class Proceedings Act, 1992*

MOTION RECORD OF THE MOVING PARTY
Motion for Interlocutory Injunction (Returnable February 16, 2022)

CHAMP & ASSOCIATES

[REDACTED]

Per: Paul Champ

[REDACTED]

[REDACTED]

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12	<i>MacMillan Bloedel Ltd v Simpson</i> , [1996] 2 SCR 1048

Court File No: CV-22-00088514-00CP

**ONTARIO
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JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60**

Defendants/Responding Parties

**NOTICE OF MOTION
(Motion returnable February 16, 2022)**

The Plaintiff will make a motion to the Court on Wednesday, February 16, 2022, at 10:00 a.m., or as soon after that time as the motion can be heard, virtually by Zoom.

PROPOSED METHOD OF HEARING: The Motion is to be heard

- ☐ In writing under subrule 37.12.1(1) because it is uncontested;
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

THE MOTION IS FOR:

1. An Order varying the terms of the interlocutory injunction issued by this Honourable Court on February 7, 2022, to include additional terms as follows:
 - a. Enjoining and restraining any persons having Notice of the Order from ordering, requesting, inciting, counselling, promoting, or encouraging in any manner whatsoever, either directly or indirectly, via social media or otherwise, any person to use air horns or train horns in downtown Ottawa for as long as the Order is in effect; and
 - b. Requiring the Defendant King to communicate the Order through his social media and other channels to all persons they know who are or who have been participating in the Freedom Convoy Protest in Ottawa; and
 - c. Directing the Sheriff of the City of Ottawa to enforce the terms of this Order and directing the Ottawa Police Service and Ontario Provincial Police, as the case may be, to assist the Sheriff in enforcing the Order upon request, in accordance with 141 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43.
2. An Order continuing the interlocutory injunction, on the varied terms described above, for a further period of sixty (60) days;
3. Costs of the motion in the cause; and
4. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Defendants are engaged in a protest in downtown Ottawa called the Freedom Convoy 2022;
2. A key tactic of the protest has been for semi-tractor trucks to blast their air horns and train horns en masse and for prolonged periods in the vicinity of the Parliament Buildings;
3. The air horns and train horns are extremely loud and can cause permanent hearing damage;
4. The air horns and train horns have created sound levels of 105 to 120 decibels for prolonged periods;
5. Prior to the interlocutory injunction Order granted by this Honourable Court on February 7, 2022, the horn tactic had been used by the Defendants in Ottawa

for eleven days, causing significant disruption to the private use and enjoyment of the homes of the Plaintiff and the proposed Class Members;

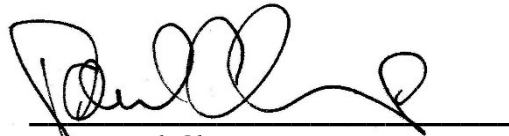
6. The horn tactic was organized and planned by the Defendants to cause serious discomfort and inconvenience to the Plaintiff and the Class Members in their private homes;
7. Prior to the interlocutory injunction Order granted by this Honourable Court on February 7, 2022, the Defendants had expressed their intention to continue the horn tactic indefinitely;
8. As a result of the interlocutory injunction Order granted on February 7, 2022, there was relatively little horn honking in downtown Ottawa for several days;
9. Since February 10, 2022, the horn honking in downtown Ottawa has resumed and intensified, in contravention of this Court's Order;
10. The Defendants Barber, Dichter and Lich have failed to communicate the Order through their social media and other channels to all persons they know who are or who have been participating in the Freedom Convoy Protest in Ottawa;
11. The Defendants Dichter and King have requested, counselled, and encouraged Freedom Convoy participants to breach the current Order;
12. Several hundreds of vehicles participating in the Freedom Convoy 2022 continue to occupy downtown Ottawa;
13. If the interlocutory injunction is not extended on the new terms sought, it is likely that the Defendants will continue and intensify their horn blasting in downtown Ottawa and that the Plaintiff and proposed Class Members will suffer irreparable harm;
14. The use of the horn tactic by the Defendants is unreasonable and substantially interferes with the use and enjoyment of the homes of the Plaintiff and the proposed Class Members;
15. The Defendants have been given notice of the existing Order, by publication of the Order online and by distributing copies to media and daily newspapers, in accordance with paragraph 8 of the Order;
16. Section 141(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 provides that orders of a court arising out of a civil proceeding and enforceable in Ontario shall be directed to a sheriff for enforcement;

17. Section 141(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 provides that a sheriff who believes that the execution of an order may give rise to a breach of the peace may require a police officer to accompany the sheriff and assist in the execution of the order.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The affidavit of Zexi Li;
2. The affidavit of Sean Flynn;
3. The affidavit of Trudy Moore; and
4. The affidavit of Jeremy King.

Date: February 15, 2022



Per: Paul Champ
CHAMP & ASSOCIATES

[REDACTED]

LSO#4 [REDACTED]

Tel: [REDACTED]

Fax: [REDACTED]

[REDACTED]

Solicitors for the Plaintiff

Court File No. CV-22-00088514-00CP

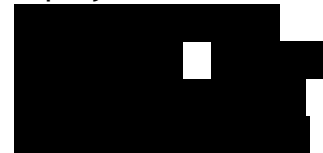
ZEXI LI

- and -

CHRIS BARBER, BENJAMIN
DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOES 1-60

Plaintiff (Moving Party)

Defendants (Responding Parties)

ONTARIO
SUPERIOR COURT OF JUSTICE**NOTICE OF MOTION**
(Motion returnable February 16, 2022)**CHAMP & ASSOCIATES**
Equity ChambersPer: Paul Champ
LSUC#: [REDACTED]**Solicitors for the Plaintiff**



Court File No:

Electronically issued
Délivré par voie électronique : 04-Feb-2022
Ottawa

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Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office,

WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: _____

Issued by: _____

Registrar
Court House,
161 Elgin Street
Ottawa, Ontario

TO: Chris Barber
Swift Current, Saskatchewan

AND TO: Benjamin Dichter
Toronto, Ontario

AND TO: Tamara Lich
Medicine Hat, Alberta

AND TO: Patrick King
Red Deer, Alberta

AND TO: John Doe 1 to John Doe 60

CLAIM

1. The Plaintiff, on behalf of the Class described herein, claims the following:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff for the Class (as defined below);
 - (b) damages for private nuisance in the amount of \$4.8-million or any such amount that this Honourable Court deems appropriate;
 - (c) punitive damages in the amount of \$5-million;
 - (d) injunctive relief prohibiting the continuation of the nuisance;
 - (e) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, as amended;
 - (f) the costs of this action, including HST;
 - (g) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act*, 1992, S O 1992, c. 6; and
 - (h) such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. Over the past two years, the COVID-19 pandemic has caused significant stress, severe illness, death and grief to every person in Canada. Over 33,000 Canadians have died from COVID-19 and thousands more suffer from its prolonged effects.
3. Governments at all levels across the country have adopted public health measures to prevent severe illness and death from COVID-19. These public health

measures have caused significant disruption to the lives of every Canadian. Despite this disruption, the vast majority of Canadians support public health measures, including vaccine mandates, because they believe these measures save lives.

4. A minority of Canadians are strongly opposed to these public health measures. The Defendants are among this minority. To express their political opposition to COVID-19 public health measures, the Defendants organized a “Freedom Convoy” of vehicles, including a large number of semi-trailer-tractor trucks, to travel from different parts of Canada and converge on the national capital of Ottawa.

5. The Defendants planned to organize a large demonstration in the vicinity of the Parliament Buildings in Ottawa. Like many protesters, they wanted their voices heard by political leaders. To ensure that happened, the Defendants designed a plan to block all the streets and roadways around Parliament and the surrounding neighbourhood, and make as much noise as possible and cause discomfort to the political leaders. To make that noise, the Defendants planned, organized, encouraged and directed “Freedom Convoy” participants to blast the horns on their vehicles, non-stop, for several hours.

6. As planned by the Defendants, the Freedom Convoy vehicles began to arrive in Ottawa in Ottawa on Friday, January 28, 2022. As planned by the Defendants, the Freedom Convoy protests formally launched on Saturday, January 29, 2022. Unlike most protests, the Freedom Convoy decided to stay and keep protesting, every day and night, until the Government of Canada met their demands of dropping all public health measures across Canada. The fact that public health measures are predominantly implemented by provincial governments has not deterred the Defendants. At the time this claim is issued, the protest remains ongoing.

7. A key tactic of the Freedom Convoy is blasting vehicle horns non-stop, all day. These horns include the air horns and train horns on the many semi-trucks. Air horns and train horns create an extremely loud noise as a warning. Air horns and train horns emit noise in the range of 100 to 150 decibels. These horns are not meant to be used

for longer than a few seconds because the sound levels are dangerous and cause permanent damage to the human ear. Despite these dangers, the Freedom Convoy trucks have been blasting these dangerous horns continuously for 12 to 16 hours per day.

8. The historical neighbourhood around the Parliament Buildings is home to approximately 24,000 residents. These residents are used to the inconvenience of large demonstrations and protests. Sometimes they even join in if they believe in the cause. These residents understand and respect the importance of democratic freedoms, including the freedoms of association, assembly and expression. But they have never experienced anything like the constant and excruciatingly loud horns of the Defendants' Freedom Convoy. For the approximately 6,000 residents who live closest to the protests, the non-stop blaring horns have caused unbearable torment in the sanctity of their own homes.

9. The Freedom Convoy horn protest organized by the Defendants has caused significant mental distress, suffering and torment to the Plaintiff and the proposed Class Members who live in the six-block radius around the main protest streets. The horn protest has substantially and unreasonably interfered with the private use and enjoyment of the Class Members' property.

PARTIES

10. The Plaintiff Zexi Li resides in Ottawa, Ontario, within five blocks of Parliament Hill. She is a 21-year-old public servant and graduate of the University of Ottawa.

11. The Defendant Chris Barber resides in Swift Current, Saskatchewan. He is one of the organizers of the Freedom Convoy. He is a truck driver, who owns a trucking company in Saskatchewan.

12. The Defendant Benjamin Dichter resides in Toronto, Ontario. He is one of the organizers of the Freedom Convoy. Dichter is a former Conservative Party of Canada candidate and a prominent supporter of the People's Party of Canada.

13. The Defendant Tamara Lich resides in Medicine Hat, Alberta. She is one of the organizers of the Freedom Convoy and frequently acts as a spokesperson on social media accounts associated with the Freedom Convoy. She is listed as the organizer of the Freedom Convoy's fundraiser on the crowdsourced fundraising platform GoFundMe. Lich is the Secretary for the Maverick Party, a western separatist group formerly known as Wexit Canada, and was also an organizer for the Yellow Vests Canada movement.

14. The Defendant Patrick King resides in Red Deer, Alberta. He is one of the organizers of the Freedom Convoy. King was a co-founder of Wexit Canada and an organizer for the Yellow Vest Canada movement.

15. John Does 1 to 60 are drivers of semi-trucks that are parked in the downtown Ottawa core during the Freedom Convoy protest, blasting air horns and train horns on their trucks as a form of protest. The identities of these truck drivers are unknown at the time of the issuance of the claim.

16. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on her own behalf and on behalf of all other persons who reside within two blocks of the main protest streets.

17. The proposed members of the Class are:

all persons who reside in Ottawa, Ontario, from Bay Street to Elgin Street and Lisgar Street to Wellington Street.

ORGANIZING THE FREEDOM CONVOY PROTEST

18. In early January 2022, the Defendants began to organize a protest to express their political opposition to COVID-19 health measures. They discussed and created a common plan to have a “Freedom Convoy” of vehicles, including a large number of semi-trailer-tractor trucks, travel from different parts of Canada and converge in the national capital of Ottawa on January 29, 2022.

19. On or around January 14, 2022, the Defendants created a Facebook page called “Freedom Convoy 2022” which they described as a “meeting place to discuss logistics, organization and mobilization to restore our Freedoms”. Indeed, the Defendants used this Facebook page to discuss logistics, organization and mobilization for the Freedom Convoy.

20. On or around January 23, 2022, the Defendants also created a fundraising page for the Freedom Convoy on the crowdsourced fundraising website GoFundMe. The Defendant Lich is listed as the organizer of this GoFundMe page, and the Defendant Dichter is listed as a Team Member.

21. On their GoFundMe page, the Defendants discussed the logistics and organization for the Freedom Convoy and solicited donations from supporters to assist them with their common plan to travel to and occupy Canada’s capital.

22. The Defendants discussed the common goals that they hoped to achieve by organizing the Freedom Convoy, which included forcing Prime Minister Justin Trudeau and the federal government to announce a repeal of all public health measures.

23. The Defendants discussed and coordinated plans for how they would occupy Ottawa and how they would attempt to reach their common goals. They discussed setting up a command room or war room to further strategize once they reached Ottawa.

24. One of the main tactics coordinated by the Defendants, in support of their goal of forcing the federal government to listen to their demands, was for participants to make as much noise as possible when stationed in Ottawa's downtown. To make that noise, the Defendants planned, organized, encouraged and directed Freedom Convoy participants to continuously blast the horns of their vehicles, as described further below.

SETTING UP IN OTTAWA AND MAIN PROTEST STREETS

25. Starting on or around Friday, January 28, 2022, Freedom Convoy vehicles started to arrive in Ottawa. These vehicles included tractor trailers, tractors with no trailers, passenger vehicles, and large recreational vehicles ("RVs").

26. When they arrived in Ottawa, the Freedom Convoy vehicles began to congregate to block many of the streets surrounding Parliament Hill and in the Centretown neighbourhood.

27. Several hundred vehicles have remained camped out in Ottawa's downtown since January 28, 2022, lined up bumper-to-bumper. The clusters of vehicles are predominantly concentrated on the streets between Bay Street to Elgin Street and Laurier Avenue to Wellington Street.

28. For 24 hours per day, the semi-trucks have primarily remained lined and concentrated on Kent Street and Bank Street running north south, and on Wellington Street running east west. The trucks remain running all day and night, with other Freedom Convoy participants organizing the delivery of fuel in jerry cans.

HORN TACTIC

29. One of the main protest tactics employed by Freedom Convoy participants has been to make as much noise as possible to disturb individuals in Ottawa's downtown.

30. To make that noise, the Defendants planned, organized, encouraged and directed Freedom Convoy participants to blast the horns on their vehicles, non-stop, for several hours.

31. The Defendants coordinated their horn-blasting tactic with Freedom Convoy participants via social media channels, including Facebook and YouTube, and via the walkie-talkie app Zello.

32. As one example of this, on January 31, 2022, the Defendant King posted a YouTube video instructing all Freedom Convoy “truckers” to collectively honk for ten minutes straight every hour and half hour.

33. Initially, this honking would last from approximately 7AM to 1AM. On or around February 1, 2022, a new timeframe was coordinated for the honking, which now occurs from approximately 8AM to 11PM.

34. The Defendants have taken to social media and Zello to celebrate the honking and to encourage participants to continue employing this tactic.

35. The types of horns that have been employed as part of the horn-blasting tactic include air horns, which are only to be used for safety warnings, and train horns.

36. Operator manuals for the types of horns being used by the Freedom Convoy provide warnings that they produce “extreme loudness” and can cause permanent hearing damage.

DEFENDANTS’ CONDUCT IS UNLAWFUL

37. The Plaintiffs plead that the Defendants’ ongoing and concerted horn-blasting tactic is unlawful.

38. The Defendants’ conduct is clearly prohibited by sections 2, 3 and 15 of the City of Ottawa Noise By-Law, By-Law No. 2017-255.

39. Section 2 of By-Law No. 2017-255 states that no person shall cause or permit any bass noise, unusual noise or noise likely to disturb the inhabitants of the City.

40. Section 3 of By-Law No. 2017-255 states that no person shall cause or permit the ringing of any bell, sounding of any horn, or shouting in a manner likely to disturb the inhabitants of the City.

41. Section 15 of By-Law No. 2017-255 states that no person shall cause or permit unnecessary motor vehicle noise such as the sounding of the horn, revving of engine and the squealing of tires of any motor vehicle on any property other than a highway.

42. The level of noise emitted by the Defendants also exceeds the noise levels that would be permitted in a workplace setting, contrary to the Federal Occupational Health and Safety Regulations, SOR/86-304 enacted pursuant to the *Canada Labour Code*, RSC, 1985 c. L-2 and contrary to the Ontario Noise Regulation 381/15 enacted pursuant to the *Occupational Health and Safety Act*, RSO 1990, c 01.

43. The Defendants' horn-blasting also constitutes conduct that violates the *Criminal Code of Canada*, RSC 1985, c C-46 pursuant to sections 430(1)(d) (Mischief), 175(1)(d) (Cause Disturbance), and 180(1)(s) (Common Nuisance).

44. Finally, exposure to loud noise for a prolonged period of time and sleep deprivation are both techniques that have been found to constitute torture, and are considered to be cruel, inhumane and degrading treatment under international law.

IMPACT

45. When walking within 50 feet of the semi-trucks blasting their air horns, the sound pressure decibel level is between 100 and 105 constantly. When the train horns on the semis are blasted, the decibel level increases to 120 to 125.

46. For individuals who live in residences beside the streets where the horns are blasting, the sound within the home is approximately 80 decibels.

47. The normal sound in a home is 35 to 40 decibels. A normal conversation is 55 to 65 decibels. A lawn mower can be 88 to 94 decibels.

48. Sleep is best at 30 decibels or below and there can be significant interference with sleep when sound level decibels exceed 45.

49. Each 10 decibel increase in sound level equates to a doubling of the sound in the listener's perception. An increase of 20 decibels is a fourfold increase.

50. Hearing damage can occur at 90 decibel sound pressure level where the exposure is over 30 minutes. At 100 decibels, sound pressure can cause hearing damage in about 15 minutes; at 120 decibel sound pressure hearing damage can occur in a matter of seconds.

51. Prolonged exposure to sound levels of 70 decibels and above can cause psychological distress and interfere with psychological integrity.

52. The truck horns are causing moral and psychological harm to the Class Members. The horns are substantially interfering with the private use and enjoyment of their homes. With horns ending as late as 1am, and no earlier than 11pm, Class Members are experiencing significant sleep disturbances.

53. Class Members who leave their homes for work, groceries or necessities experience significantly elevated sound exposure. Some Class Members are avoiding going out as much as possible and are prisoners in their own homes. Others have been forced to leave their homes and find alternate accommodation. The Class Members are living in daily torment caused by the incessant blasting of truck horns.

PLAINTIFF'S PERSONAL EXPERIENCE

54. The Plaintiff, a resident of the Centretown neighbourhood in the heart of downtown Ottawa, has suffered mental distress, suffering and torment as a result of

the persistent and loud honking from several large trucks which have been camped outside of her residence since Friday, January 28, 2022.

55. While some of the honking sounds are from regular sized motor vehicle horns, the loudest and most persistent honks have come from large transport trucks. Some of these trucks are equipped with horns emit loud honking noises typical of vehicles of their size. A number of the trucks are equipped with horns which are similar in tone and volume to train horns.

56. From within her unit, the sound of all three types of honking horns from the persists at regular and frequent intervals from morning to night, sometimes as late as 1:30 am. With the exception of some short periods of reprieve late in the night, the sound feels to the Plaintiff as if it is nearly constant. The honking of the horns is frequently accompanied by loud music, sounds of shouting and fireworks. The combination of these sounds makes the Plaintiff feel as though she is living in a war zone.

57. The honking horns, in particular, have interfered with the sense of peace, safety and serenity which the Plaintiff previously enjoyed in her home. During the brief periods when the sound of honking horns subsides, the Plaintiff is unable to enjoy the relative quiet because she becomes riddled with anxious anticipation for the moment it will start up again. The Plaintiff has found this anxious anticipation almost as unbearable as the sounds of the horns themselves.

58. The Plaintiff has been unable to enjoy a restful night's sleep since the Freedom Convoy arrived in her neighbourhood. The only way the Plaintiff can fall asleep and temporarily escape the noise is by playing music on external speakers at 70-80% volume and then inserting noise-cancelling earphones or earplugs into her ears.

59. The Plaintiff is fearful every time she ventures outside. She does not leave her residence without first inserting noise-cancelling headphones into her ears. Even with these devices in her ears, the Plaintiff can still hear the sounds of the honking horns

very clearly. The sound is so loud that she can physically feel vibrations inside her ears.

60. When the Plaintiff ventures outside, she is almost immediately subjected to heckling by members of the Freedom Convoy, yelling at her to remove the mask she wears to protect herself and others from contracting COVID-19. When she ignores the heckles, members of the Convoy respond by honking their horns which invariably causes the Plaintiff to flinch. When the Plaintiff flinches, the hecklers cheer loudly.

61. Since Friday January 28, 2022, the Plaintiff has contacted the Ottawa Police Service on at least 14 occasions to complain about the noise and the distress it is causing her. In response to her calls, she has either been told that there's nothing that can be done or that there are officers on the ground who will address the issue, but no one ever comes and the noise continues unabated. The sense that police are impotent to enforce law and order has contributed to the Plaintiff's fear and anxiety which are further exacerbated by the intolerable levels of noise.

62. The Plaintiff loves her community and is heartbroken by the trauma that is being inflicted on her and her neighbours.

PRIVATE NUISANCE

63. The incessant blaring of the high decibel air horns and train horns substantially interferes with the private use and enjoyment of the Class Members' homes. The conduct is totally unreasonable and unjustified.

64. The Defendants Barber, Dichter, Lich and King have organized, planned, encouraged and directed the horn tactic by Defendants John Doe 1 to John Doe 60.

DAMAGES SUFFERED BY CLASS MEMBERS

65. As a consequence of the private nuisance by the Defendants, Class Members suffered injury and damages including:

- (a) emotional and mental distress;
- (b) difficulty concentrating;
- (c) interference with quiet enjoyment of home;
- (d) headaches; and
- (e) difficulty sleeping.

66. The estimated damages per Class Member is \$100 per day of the continued use of the unlawful horn tactic.

67. Some Class Members have incurred special damages for the cost of alternate accommodations and ear plugs, in an amount to be specified at a future date.

PUNITIVE DAMAGES

68. The Defendants deliberately planned the horn tactic to cause distress and discomfort to the Class Members and substantially interfere with the private enjoyment of their homes. The Defendants are aware or ought to be aware that the prolonged use of the extremely loud air horns and train horns can cause permanent hearing damage and psychological harm. The Defendants have acted with wanton disregard towards the residents of Ottawa.

69. This high-handed and callous conduct of the Defendants warrants the condemnation of this Honourable Court. Canada is a free and democratic society with a long tradition of peaceful protest and assemblies. The Defendants have abused those freedoms to cause serious harm to others, innocent bystanders to the Defendants' pursuit of their misguided political goals.

70. The Plaintiff proposes that this action be tried at the City of Ottawa, Ontario.

Dated this 4th day of February, 2022.

CHAMP & ASSOCIATES
Barristers and Solicitors

[REDACTED]

Per: Paul Champ

[REDACTED]

[REDACTED]

[REDACTED]

Court File No.

ZEXI LI

-and -

CHRIS BARBER, BENJAMIN
DICTER, TAMARA LICH, PATRICK KING and
JOHN DOES 1-60
Defendants

Plaintiff

ONTARIO
SUPERIOR COURT OF JUSTICE

STATEMENT OF CLAIM

Proceedings under the *Class Proceedings Act*,
1992

CHAMP & ASSOCIATES

[REDACTED]
[REDACTED]
[REDACTED]
Tel.: [REDACTED]
[REDACTED]

Per: Paul Champ
LSUC#: [REDACTED]

Solicitors for the Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR JUSTICE MCLEAN) WEDNESDAY, THE 16TH DAY
)
) OF FEBRUARY, 2022

BETWEEN:

ZEXI LI

Plaintiff/Moving Party

- and -

CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5,
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JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60

Defendants/Responding Parties

DRAFT ORDER

THIS MOTION, made by the Plaintiff for an interlocutory injunction and costs, pursuant to section 101 of the *Courts of Justice Act* and Rule 40.01 of the *Rules of Civil Procedure*, was heard at Ottawa on February 5, 7, and 16, 2022 by videoconference.

UPON READING the motion records of the parties and **UPON HEARING** the oral arguments made by counsel for the parties by Zoom,

1. **THIS COURT ORDERS** that the interlocutory injunction granted on February 7, 2022, pursuant to section 101 of the *Courts of Justice Act*, Rule 40.01 of the *Rules of Civil Procedure*, and section 12 of the *Class Proceedings Act*, is continued.
2. **THIS COURT ORDERS** that any persons having notice of this Order are hereby restrained and enjoined from using air horns or train horns, other than those on a motor vehicle of a municipal fire department, in the geographic location anywhere in the City of Ottawa, in the vicinity of downtown Ottawa, being any streets north of Highway 417, otherwise known as the Queensway, for 60 days from the date of this Order.
3. **THIS COURT ORDERS** that any persons having notice of this Order are hereby restrained and enjoined from ordering, requesting, inciting, counselling, promoting or encouraging in any manner whatsoever, either directly or indirectly, via social media or otherwise, any person to use air horns or train horns in downtown Ottawa for as long as the Order is in effect.
4. **THIS COURT ORDERS** that the Defendants Barber, Dichter Lich, and King forthwith direct that they communicate this Order through their social media channels, including Twitter, Instagram, TikTok, Facebook, as well as the Freedom Convoy 2022 Facebook page.
5. **THIS COURT ORDERS** that any police officer with the Ottawa Police Service, and/or the appropriate police authority in the jurisdiction in question (the "Police"), shall have authorization to arrest and remove any person who has knowledge of this Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order.
6. **THIS COURT ORDERS** that the Police shall retain discretion:
 - a. as to the timing and manner of enforcement of this Order, and specifically retain discretion as to the timing and manner of arrest and removal of any person pursuant to this Order; and
 - b. to detain and release any person without arrest who the Police have reasonable and probable grounds to believe is contravening, or has contravened, any provisions of this Order, upon that person agreeing in writing to abide by this Order.
7. **THIS COURT ORDERS** that any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to this Order shall have authorization to release that person from arrest upon that person agreeing in writing to obey this Order;

8. **THIS COURT ORDERS** that this Order be directed to the Sheriff of the County of Ottawa for enforcement and directs the Ottawa Police Service, and any Police Service assisting the Ottawa Police Service, to assist the Sheriff in the enforcement of the order upon request, pursuant to section 141 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43.
 9. **NOTICE OF THIS ORDER** may be given by: posting copies of this Order in or around downtown Ottawa; reading the Order to any person, including but not limited to reading the Order over an amplification system publishing this Order online, including on social media accounts associated with the Defendants, and by distributing copies of this Order to media including CBC, Radio-Canada, CTV, Global News and all daily newspapers in the Ottawa-Gatineau area.
 10. **THIS ORDER** shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.
 11. **THIS COURT ORDERS** that the costs of this motion shall be in the cause.
-

Court File No. CV-22-00088514-00CP

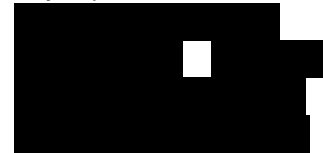
ZEXI LI

- and -

CHRIS BARBER, BENJAMIN
DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOES 1-60

Plaintiff (Moving Party)

Defendants (Responding Parties)

ONTARIO
SUPERIOR COURT OF JUSTICE**DRAFT ORDER****CHAMP & ASSOCIATES**
Equity ChambersPer: Paul Champ
LSUC#: [REDACTED]**Solicitors for the Plaintiff**

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ZEXI LI

Plaintiff/Moving Party

- and -

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Defendants/Responding Parties

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF ZEXI LI

I, ZEXI LI, of the City of Ottawa, in the Province of Ontario, AFFIRM:

1. I am the representative Plaintiff in this proposed class action and the moving party in this motion. As such, I have personal knowledge of the matters to which

I hereinafter depose except where I have stated my evidence to be on information and belief, in which case I have indicated the source of my information and my belief in the truth of the information.

2. I reside in the Centretown neighbourhood in the heart of downtown Ottawa.
3. Starting on Friday, January 28, 2022 I began experiencing severe mental distress, suffering and torment as a result of persistent and loud honking from several large trucks which have been camped outside of my residence as a part of a so-called Freedom Convoy (the “Convoy”). I provided further details about the nature of this honking and its impact on me in a previous Affidavit sworn in this proceeding, dated February 4, 2022, attached hereto as **Exhibit “A”**.
4. On February 7, 2022, I observed the hearing of the motion for an interlocutory injunction in this proceeding by videoconference. I was watching this motion hearing when the Court granted the injunction Order, prohibiting the honking in downtown Ottawa for a period of 10 days.
5. At approximately 2:30PM on February 7, 2022, just before the Court issued its decision granting the injunction, I heard the honking outside my building intensify significantly.
6. Shortly after the Court granted the injunction, at approximately 3:10PM, one of my neighbours sent me a link to a Facebook Live video posted by the Defendant Patrick King (“King”) to “The Real Pat King” Facebook page: <https://fb.watch/b1dCQTIMAI/>. It is my understanding and belief, from my own

Facebook use, that “Facebook Live” videos are broadcast in realtime. The same video was also posted to the “Vidstorm” channel on YouTube:

<https://youtu.be/JROM-3fos7g>.

7. The broadcast of King’s Facebook Live video was timestamped as starting at 3:03PM on February 7, 2022, and lasting for 5 minutes and 46 seconds. The words “BREAK BREAK BREAK” appeared under the video on the Facebook page.
8. I watched King’s entire Facebook Live video from approximately 3:10PM to 3:16PM.
9. Starting around 0:10 into this Facebook Live video, King says he wants all truckers’ attention and tells them to “break break break”. He then makes the following statements throughout the video:
 - (a) Starting at approximately 0:28 in he states that he has a message that needs to go out to “every trucker, everybody on the Convoy” and that everybody needs to be “dead silent on the horns”;
 - (b) Starting at approximately 0:54 in he states that a Judge has issued an injunction against the horns for 10 days, and repeats that there needs to be “silence on the horns”;
 - (c) Starting at approximately 1:10 in he states, “This is their grounds to arrest you and pull you out of your trucks”;
 - (d) Starting at approximately 2:50 in he states, “For the next ten days, you cannot blast your horns. I understand it’s hard, we love them, we absolutely love them, but no more horns”;
 - (e) Starting at approximately 3:55 in he states, while laughing, “Remember, these people haven’t been able to sleep for 10 days. Okay, it’s kind of funny. I’m not going to laugh. I’m not going to lie, it’s pretty hilarious”
 - (f) Starting at approximately 4:07 in he states, “So now, you’ve got the citizens of Ottawa requesting the municipality of Ottawa to put in an injunction to stop the horns, and now they put an injunction in there. And

now they're asking for the Feds to come and negotiate and get us out of their city. It's working, it's working beautiful. It's awesome guys. I'm not laughing, you're laughing. It's kind of funny, it's kind of funny how we can hug and laugh and have a good time, and things are working. Ladies and gentlemen, from the bottom of my heart, great job out there. You're doing fantastic, let's keep up that great work. Let's keep up that enthusiasm"

(g) Starting at approximately 5:00 he repeats to "stop on the horns" and that "the injunction's been put in for 10 days".

10. At around 3:30PM on February 7, 2022, I noticed that the honking outside my building had stopped entirely.
11. From 3:30PM on February 7, 2022 to the morning of February 10, 2022, I did not hear very much honking occurring outside my building. I did hear occasional honking during this period, but it was generally fairly brief. It was nowhere near the same level of loud, continuous honking that was occurring before that. Instead of honking their horns, I noticed that the vehicles parked outside my building had started loudly and frequently revving their engines instead.
12. Starting on February 10, 2022, I began to hear more frequent horn honking downtown.
13. Around 9:00AM on February 10, 2022, I noticed a number of trucks leaving the spots they had been occupying for the past two weeks. For some of them, it was the first time I had seen them move. Around this time, I noticed some honking—not as intense as it had been before the injunction Order, but louder and more frequent than it had been for a few days.

14. On February 11, 2022, I heard more frequent honking outside my building. It was more intermittent during the day, but I noticed an increase in volume from the day before. At night, the honking started to become more constant again. There was notable honking around 8PM, and by 11PM the honking had returned in near full force. From 11PM to 12AM, there was near constant and loud honking, accompanied by revving, shouting (often through a megaphone) and sirens/alarms that would blare. I also heard fireworks throughout the night.
15. At 4AM on February 12, 2022, I was awoken by a loud alarm blaring outside. Throughout the day, the honking was very frequent. The train horns had returned, honking all of the time, notably around 12PM. Between 10AM and 12PM the honking was very frequent. By 2PM, the protesters were blasting music. Around 7PM there was very loud honking again, accompanied by sirens. Train horns blared throughout the day and most notably from 9PM to 9:20PM. I also heard fireworks throughout night.
16. The honking continued and intensified on February 13, 2022. It began around 10AM and continued throughout the day. Around 1PM, I watched a group of police officers walk past individuals honking and an open fire. I left downtown for a couple of hours between 2PM and 4PM, and when I returned, the honking was near constant. I could frequently hear train horns throughout the day.
17. There remains hundreds of large trucks in downtown Ottawa. I cannot count the number, but local news reports suggest there remains 400 trucks the several blocks surrounding the Parliament Buildings. Attached as **Exhibit "B"** is a story

18. I make this affidavit in good faith and for no improper purpose.



Christine Johnson
Champ & Associates

Zexi Li

[Signature]

This is **Exhibit “A”** referred to
in the Affidavit of **ZEXI LI**,
affirmed before me remotely
in accordance with O. Reg. 431/20
by video conference from the City of Ottawa,
in the Province of Ontario,
this 13th day of February, 2022.



A Commissioner for Taking Oaths, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ZEXI LI

Plaintiff/Moving Party

- and -

**CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING and
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Defendants/Responding Parties

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF ZEXI LI

I, ZEXI LI, of the City of Ottawa, in the Province of Ontario, AFFIRM:

1. I am the representative Plaintiff in this proposed class action and the moving party in this motion. As such, I have personal knowledge of the matters to which

I hereinafter depose except where I have stated my evidence to be on information and belief, in which case I have indicated the source of my information and my belief in the truth of the information.

2. I reside in the Centretown neighbourhood in the heart of downtown Ottawa. I first moved to Ottawa to pursue my post-secondary education at the University of Ottawa in the fall of 2017. In the course of my studies, I fell in love with the city and, in particular, the vibrant, multi-cultural community in which I currently reside.
3. I am informed by my review of the Ottawa Neighbourhood Study undertaken by the University of Ottawa and do believe that the population of Centretown is in the range of approximately 28,000 residents. I would estimate based on that number that there are approximately 5,000 to 6,000 residents in the vicinity of where I live, within a six block radius of Parliament Hill.
4. Since Friday, January 28, 2022 I have been experiencing severe mental distress, suffering and torment as a result of persistent and loud honking from several large trucks which have been camped outside of my residence as a part of a so-called Freedom Convoy (the "Convoy"). I understand from media reports that the Convoy is comprised of people who have converged on Ottawa to express their political opposition to COVID-19 public health measures.
5. While some of the honking sounds are from regular sized motor vehicle horns, the loudest and most persistent honks have come from large transport trucks. Some of these trucks are equipped with horns which emit loud honking noises

typical of vehicles of their size. A number of the trucks are equipped with horns which are similar in tone and volume to train horns. The train horns are as loud if not louder than anything I have ever heard.

6. From within my apartment, I have been inundated with the sounds of honking horns, including train-type horns, from morning to night, sometimes as late as 1:30 am. With the exception of some short periods of reprieve late in the night, the sound feels like it's nearly constant.
7. I downloaded an application on my mobile phone called Decibel X which measures sound levels. When the sounds of honking horns are at their peak, Decibel X has recorded sound levels as high as 84 decibels within my apartment.
8. I cannot overstate the extent to which the honking horns are affecting me emotionally. My nerves are frayed. I can't sleep. I don't feel the usual sense of peace, safety and serenity which I usually feel when I'm at home. During the brief periods when the sound of honking horns subsides, I can't even enjoy the moment of relative quiet because I become riddled with anxious anticipation for the moment it will start up again. Waiting for the next honk is almost as unbearable as the sound of the horns.
9. I have not had a restful night's sleep since the Convoy descended on my community. The only way I can fall asleep and temporarily escape the noise is by playing music on external speakers at 70%-80% volume and inserting noise-cancelling earphones or earplugs into my ears.

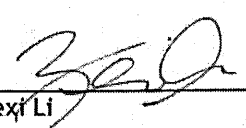
10. I am scared to go outside but I do venture out when necessary. Before leaving my residence, I insert noise-cancelling headphones into my ears. Nonetheless, the sound of honking horns is almost unbearable. I can physically feel the noise vibrating inside my ears.
11. When I do get up the courage to leave my apartment, I am almost immediately subjected to heckling my members of the Convoy who yell at me to remove the mask I wear to protect myself and others from contracting COVID-19. If I ignore the heckles, members of the Convoy respond by honking their horns at me. In response to the horns being honked in such close proximity to me I almost invariably flinch, causing the members of the convoy to cheer loudly and laugh at my expense. I have never felt so unsafe or demoralized in my neighbourhood.
12. Since Friday January 28, 2022, I have contacted the Ottawa Police Service on approximately 14 occasions to complain about the noise and the distress it is causing me, either by phone or by approaching officers on the street near my home. In response to my calls for help I have either been told that there is nothing that can be done or that the officers on the ground will address the issue but the noise continues unabated. The fact that the police are apparently impotent to enforce basic order in my neighbourhood, in a context where I feel that I and others are being actively harmed, is making me even more anxious and fearful.

- 5 -

13. I love my community so much and am proud to live here. I am heartbroken by the trauma that is being inflicted on me and my neighbours and by being made to feel like a prisoner in my own home by people who claim to stand for freedom.
14. I make this affidavit in good faith and for no improper purpose.

SWORN before me remotely)
in accordance with O. Reg 431/20)
by videoconference between)
Ottawa, ON (commissioner))
and Ottawa, ON (affiant))
this 4th day of February, 2022)


A commissioner for taking affidavits
Christine Johnson
Chang & Associates


Zexi Li

**ONTARIO
SUPERIOR COURT OF JUSTICE**
**Proceeding commenced at
Ottawa**

AFFIDAVIT OF ZEXI LI

CHAMP AND ASSOCIATES

[REDACTED]
Ottawa, ON [REDACTED]

Paul Champ
LSO [REDACTED]

Tel: [REDACTED]
[REDACTED]

Solicitors for the Applicant

This is **Exhibit “B”** referred to
in the Affidavit of **ZEXI LI**,
affirmed before me remotely
in accordance with O. Reg. 431/20
by video conference from the City of Ottawa,
in the Province of Ontario,
this 13th day of February, 2022.



A Commissioner for Taking Oaths, etc.

Ottawa

Police negotiators convince some trucks to leave, but most won't budge

'Sophisticated level of demonstrators' remain in Ottawa as protest nears 3rd weekend

CBC News · Posted: Feb 10, 2022 8:50 AM ET | Last Updated: 30 minutes ago



Police struggle as Ottawa protesters employ new tactics

12 hours ago | 2:04

Ottawa police struggle to maintain control as protesters and their supporters employ new tactics and fortify a new supply camp. While on Parliament Hill, Conservatives soften their support and the federal government is pushed to find a solution. 2:04

The latest on Day 14 of the protest:

- ***Ontario government moves to freeze protest funding from GiveSendGo platform.***
- ***Conservatives [want all federal COVID restrictions dropped](#), and for demonstrators to leave.***
- ***[Ontario is skipping a protest meeting](#) with federal and city governments.***
- ***GoFundMe will [answer questions from MPs March 3 regarding protest fundraiser](#) on its website.***
- ***Ottawa's [Shepherds of Good Hope](#) has raised \$750K after being targeted.***

Through negotiation and towing enforcement, Ottawa police are trying to manage hundreds of trucks that remain in the city as part of a protest involving a "sophisticated level of demonstrators," the chief said Thursday.

Chief Peter Sloly said negotiators have managed to convince the drivers of 25 of more than 400 trucks to leave over the past 24 hours, including 12 from the Coventry Road encampment area and 10 more from Wellington Street in front of Parliament Hill.

Sloly said a team of police liaison officers and negotiators from across the province have been working on persuading protesters to leave by convincing them they "made their points" and they "are now suffering potential jeopardy for any unlawful activity."

- **[Governments talk as Ottawa businesses plead for urgent help](#)**
- **[Nurses hit with protest stress after 2 years of COVID](#)**

Sloly said 126 criminal investigations are underway and more than 400 hate incidents have been reported to the Ottawa Police Service's hotline, while 25 arrests have been made connected to the protest.

Sloly also said he hopes additional resources from the provincial and federal government will help convince more protesters to return home. That's especially prudent since it's not known how many more vehicles could return to Ottawa this weekend when the protest tends to grow and become more raucous.

Province moves to shut down fundraiser

Ottawa's protest has also led to copycat events across Canada at border crossings in [Windsor, Ont.](#), [Alberta](#) and a new demonstration [at the Manitoba-North Dakota](#) border.

Those events are currently funded partly through a fundraiser on the GiveSendGo online platform, but on Thursday the Ontario government moved to shut that down.

The government says an order was issued by the Ontario Superior Court to prohibit anyone donating or using "monetary donations made through the Freedom Convoy 2022 and Adopt-a-Trucker campaign pages on the GiveSendGo online fundraising platform."

"It binds any and all parties with possession or control over these donations," read a statement from Ford's office.

911 line jammed by mostly U.S. callers

Some of that money has come from the U.S., and at Thursday's news conference, Sloly explained how Americans have also targeted phone lines like 911 and the non-emergency phone number.

He said officials think the culprits "are supporting the core demonstrations here and across the country."

"They were coming in from the United States, not exclusively, but significantly from United States-based addresses," said Sloly.

These types of swatting and doxing efforts have consistently plagued police since the demonstration began, he added.

"These are tactics that we've seen deployed in other locations across North America, and they're being employed here."

Darryl Wilton, the head of the association representing Ottawa paramedics, said the swatting tactics are putting people's lives in danger and are more evidence the protests need to come to an end.

43

"Somebody can call with a medical emergency that may not make it through to paramedics when the lines are saturated," he said.

"These are not patriots. These people should not be flying the Canadian flag. They're not doing anything to protect communities or Canadians."

Protesters circle Ottawa airport

Thursday began with a group of protesters who chose to hop in their vehicles and disrupt traffic at Ottawa's main airport for about two hours.

Traffic cameras showed a group of vehicles heading there around 8 a.m. ET and that group circled until around 10 a.m. before heading back to the nearby site on Coventry Road.



Protesters head to Ottawa airport, slowing traffic for two hours

24 hours ago | 0:42

A group of people protesting Canada's pandemic restrictions drove past the Ottawa airport Thursday, slowing traffic but otherwise having a minimal impact on operations, according to a statement from the Ottawa International Airport Authority. 0:42

More than 50 flights were still scheduled to arrive or leave when protest vehicles began to disrupt traffic.

In a statement, the Ottawa International Airport Authority said there were about 60 to 70 vehicles involved and it had minimal effects on the airport.

Natalia Goodwin CBC 



@NataliaGoodwin

Right now at [#ottawa](#) airport pa convoy of protesters are driving the loop

Watch on Twitter

9:36 AM · Feb 10, 2022 

[Read the full conversation on Twitter](#)

 266

 Reply

 Share

[Read 84 replies](#)

"We are very disappointed that the protesters have chosen to disrupt an industry that has already been decimated by the pandemic."

Popular Now in News

1 LIVE**Ford speaks as protest blockades continue in Ottawa, Windsor**

6494 reading now

2 COMING UP LIVE**Protesters allow lane of traffic to open at Ambassador Bridge blockade**

1603 reading now

3 U.S. offers Trudeau government help to end border blockade

918 reading now

4 Ottawa close to removing pre-arrival COVID-19 test for fully vaccinated Canadians: sources

896 reading now

5 Ontario court freezes access to funds raised for protest convoy on GiveSendGo platform

329 reading now

?

RECOMMENDED FOR YOU**U.S. offers Trudeau government help to end border blockade**

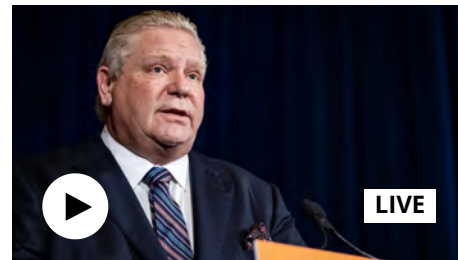
Alexander Panetta

News - Politics

**Ottawa close to removing pre-arrival COVID-19 test for fully vaccinated Canadians: sources**

Sophia Harris

News - Business

**LIVE****Ford speaks as protest blockades continue in Ottawa, Windsor**

News - Canada - Toronto





Ottawa shelter 'blown away' by \$750K in donations after staff, residents harassed

News - Canada - Ottawa

'I had the run of the day': McMorris slams scoring in snowboard event won by fellow Canadian Parrot

Myles Dichter

Sports - Olympics - Winter Sports - Snowboard

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Visitez Radio-Canada.ca

ZEXI LI

47
-and-

BARBER, DICHTER, LICH, KING et al

Applicant

Respondents

Court File No. CV-22-00088514-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
Ottawa

AFFIDAVIT OF ZEXI LI
(SWORN FEBRUARY 13, 2022)

CHAMP AND ASSOCIATES

[REDACTED]

Paul Champ
LSO [REDACTED]

Tel: [REDACTED]
[REDACTED]

Solicitors for the Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60**

Defendants/Responding Parties

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF SEAN FLYNN

I, SEAN FLYNN, of the City of Ottawa, in the Province of Ontario, AFFIRM:

1. I am a resident of Ottawa and concerned citizen. I reside in the New Edinburgh neighbourhood located approximately three kilometers from the core of

downtown. Since January 28, 2022, I have been regularly venturing around downtown Ottawa, by walking and cycling, to bear witness to the Freedom Convoy 2022 protest occupying the area. As such, I have personal knowledge of the matters to which I hereinafter depose except where I have stated my evidence to be on information and belief, in which case I have indicated the source of my information and my belief in the truth of the information.

2. I am aware that, on February 7, 2022, a Judge of the Ontario Superior Court of Justice granted an Order for an injunction, prohibiting the use of air horns and train horns in downtown Ottawa for a period of 10 days. I learned about this Order by receiving a “Breaking News” alert from the CBC app on my cell phone.
3. Before the injunction Order was granted, it was my observation that the horn honking in downtown Ottawa was extremely loud and constant.
4. Even from inside my residence in New Edinburgh, several kilometres away from downtown, I could hear the sound of honking horns very clearly from January 28, 2022 to the afternoon of February 7, 2022. On January 31, 2022 and February 1, 2022 I could hear the intermittent honking of horns over the course of almost 20 hours.
5. Troubled by reports I read in the media in which witnesses to the events unfolding near Parliament Hill claimed that the protests were not disruptive or particularly loud, which did not accord with what I was hearing from my residence several kilometers away, I decided to attend some of the locations where the trucks were situated in order to assess the situation for myself.

6. On January 30, 2022, I was walking in the vicinity of Rideau Street and Sussex Drive where the sound of honking horns was louder than anything I have ever heard.
7. On February 1, 2022, I walked from my home to Parliament Hill and arrived there at approximately 10:50PM. I was shocked by what I heard. The noise from assembled vehicles on Wellington Street was overwhelmingly and oppressively loud. The sound was so loud I could feel it reverberating throughout my entire body. The honking sounds were being emitted from many vehicles including transport trucks.
8. On February 5, 2022 I attended the intersection of Bank Street and Slater Street. Long rows of several large transport trucks were parked on each side of Slater Street. The trucks and vehicles were honking their horns so loudly that I received an alert on my Smart Watch which read: “[caution symbol] Loud- Repeated, long term exposure to sounds at this level can damage your hearing.”
9. After the injunction Order was granted on February 7, 2022, it was my observation that it became much quieter in downtown Ottawa for a few days. When walking and cycling downtown in the days that followed the granting of the Order, I had been listening for honking and did not really hear any.
10. Even at my home in New Edinburgh, I initially experienced relief from the sound of loud honking that could previously be heard from the protesters downtown. This had been a welcome change.

11. Unfortunately, starting on Friday, February 11, 2022, I again began to hear more regularly occurring honking of air horns and train horns downtown.
12. While walking downtown on Saturday, February 12, 2022, I witnessed a number of Freedom Convoy participants blatantly honking horns. Just before 5PM, I observed and recorded a video of a number of trucks parked at the intersection of Kent Street and Albert Street, revving their engines and intermittently honking very loud horns. At around 9PM, I observed a number of trucks parked at the intersection of Albert Street and O'Connor Street, and nearly every one of these trucks were honking loud horns at that time. My Smart Watch indicated sound levels of 101 dB when this honking was occurring.
13. It has been my observation that there are still many vehicles, including many large transport trucks, occupying the streets in the downtown core.
14. In some places, it appears to me as though the number of vehicles has grown. For instance, when I was walking downtown on February 9, 2022 between 12AM to 1AM, I observed that the vehicles had spread out as far the intersection of Kent Street and Cooper Street in Centretown.
15. I make this affidavit in good faith and for no improper purpose.

AFFIRMED before me remotely in
accordance with O. Reg. 431/20 by
video conference from the City of
Ottawa, in the Province of Ontario,
this 14th day of February, 2022.

A commissioner for taking affidavits



Christine Johnson
Champ & Associates



Sean Flynn

ZEXI LI

53

-and-

BARBER, DICHTER, LICH, KING et al

Applicant

Respondents

Court File No. CV-22-00088514-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
Ottawa

AFFIDAVIT OF SEAN FLYNN

CHAMP AND ASSOCIATES

[REDACTED]

Paul Champ
LSO [REDACTED]

Tel: [REDACTED]
Fax: [REDACTED]

Solicitors for the Plaintiff/Moving Party

Court File No: CV-22-00088514-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ZEXI LI

Plaintiff/Moving Party

- and -

CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5,
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JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60

Defendants/Responding Parties

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF TRUDY MOORE

I, TRUDY MOORE, of the City of Ottawa, in the Province of Ontario, AFFIRM:

1. I am a legal assistant at Champ & Associates, the law firm representing Zexi Li, the representative Plaintiff in this proposed class action and the moving party in

this motion. As such, I have personal knowledge of the matters to which I hereinafter depose except where I have stated my evidence to be on information and belief, in which case I have indicated the source of my information and my belief in the truth of the information.

2. I am aware that, on February 7, 2022, a Judge of the Ontario Superior Court of Justice granted an Order for an injunction (the "Injunction Order"), prohibiting the use of air horns and train horns in downtown Ottawa for a period of 10 days.
3. I am informed by Paul Champ and do believe that, on February 7, 2022, Mr. Champ sent copies of the Injunction Order to: Global News, CTV News, CBC, the Ottawa Citizen and the Ottawa Sun. Mr. Champ received replies from all of these organizations confirming receipt of the Order.
4. I am aware that the above-noted media and daily newspapers then published copies of the Injunction Order and/or reported on the terms of the Order in the following articles (attached hereto as **Exhibit "A"**):
 - (a) on February 7, 2022 Global News published an article reporting on the terms of the Order: "Trucker protest: Judge grants injunction against honking in downtown Ottawa", online at <https://globalnews.ca/news/8601005/ottawa-trucker-protests-injunction/>;
 - (b) on February 8, 2022, Global News published a further article reporting on the terms of the Order: "Trucker convoy: Here's what the 10-day

injunction against horns includes”, online at:
<https://globalnews.ca/news/8602756/freedom-convoy-injunction-what-does-it-mean/>;

- (c) on February 8, 2022, CTV News published an article reporting on the terms of the Order: “Meet the 21-year-old Ottawa woman who stopped the horns”, online at: <https://ottawa.ctvnews.ca/meet-the-21-year-old-ottawa-woman-who-stopped-the-horns-1.5772637>;
- (d) on February 7, 2022, CBC published an article reporting on the terms of the Order: ‘Court grants injunction to silence honking in downtown Ottawa for 10 days”, online at: <https://www.cbc.ca/news/politics/injunction-ottawa-granted-1.6342468>;
- (e) on February 8, 2022, the Ottawa Citizen published a copy of the Order within its article, “Judge orders truckers’ horns silenced for 10 days”, online at <https://ottawacitizen.com/news/local-news/judge-orders-truckers-horns-silenced>;
- (f) on February 8, 2022, the Ottawa Sun published a copy of the Order within its article, “Judge grants interim injunction against honking at Ottawa protest, online at <https://ottawasun.com/news/national/judge-grants-injunction-against-honking-in-downtown-ottawa>;

5. I am informed by Emilie Taman and do believe that, on February 10, 2022, Ms. Taman sent copies of the Injunction Order to le Droit and Radio-Canada by email. I am informed by Ms. Taman and do believe that both le Droit and Radio-Canada replied by email on the same date confirming that they have reported on the Injunction Order and its terms.
6. I am aware that le Soleil reported on the terms of the Injunction Order on February 7, 2022 (“Camionneurs: interdiction de klaxonner pendant 10 jours à Ottawa”, online at: <https://www.lesoleil.com/2022/02/07/camionneurs-interdiction-de-klaxonner-pendant-10-jours-a-ottawa-6d7a313cedff29eb2098a77549aa22a8>). I am also aware that Radio-Canada reported on the terms of the Order on February 7, 2022 (“Un juge accorde une injonction de 10 jours contre les klaxons des camionneurs”, online at: <https://ici.radio-canada.ca/nouvelle/1860411/injonction-provisoire-manifestation-camionneurs-klaxons-ottawa>). Copies of the articles published by le Droit and Radio-Canada are attached hereto as **Exhibit “B”**.
7. I am aware that there was further news coverage of the terms of the Injunction Order via television and/or radiobroadcasts by Global News, CTV News, CBC, Radio-Canada, and many other news media organizations within Canada and throughout the world.
8. As one example of such a radio broadcast, on February 8, 2022 CBC Radio’s Ottawa Morning program reported on the terms of the Order in the segment “Court grants injunction to silence honking in downtown Ottawa” (available

online at <https://www.cbc.ca/listen/live-radio/1-100-ottawa-morning/clip/15893808-court-grants-injunction-silence-honking-downtown-ottawa>). Included in this segment was a clip of CBC reporter Evan Dyer interviewing a Freedom Convoy participant about why the honking downtown had stopped. The individual being interviewed responded that Freedom Convoy participants had ceased their honking because of the Order, and that he “heard the instructions” not to honk.

9. I am aware that, on February 8, 2022, the Ottawa Police Service (“OPS”) published a news release on its website posting a copy of the Injunction Order. I am aware that the OPS also published a copy of the Order through its Twitter account, @OttawaPolice, on February 8, 2022: <https://twitter.com/OttawaPolice/status/1491194173206274050>. Attached hereto as **Exhibit “C”** is a copy of the OPS news release, attaching the Order.
10. I am informed by Bijon Roy and do believe that, on February 10, 2022, Mr. Roy sent a copy of the Injunction Order and Statement of Claim in this proceeding to the Defendant Patrick King (“King”) by email, to the email address publicly listed for King on the Freedom Convoy Canada website (<https://freedomconvoycanada.com/contacts>). Attached hereto as **Exhibit “D”** is a copy of the email and attachments sent to King on February 10, 2022.
11. I am informed by Bijon Roy and do believe that, at 5:06PM on February 10, 2022, Mr. Roy also sent a copy of the Injunction Order to King by SMS, to the cell phone number publicly listed for King on the Freedom Convoy Canada

website (<https://freedomconvoycanada.com/contacts>). I am informed and do believe that Mr. Roy received a response at 5:07PM stating “This isn’t how you serve documents”, to which he replied “All that is required is notice, not service”. A series of further responses was then received from Mr King’s cell phone number at 5:08PM, stating “This is a lie” and “100% fake”. Attached hereto as **Exhibit “E”** is a copy of the SMS exchange between our firm’s Zoom number and the Defendant King’s cell phone number.

12. I am informed by Mr. Champ and do believe that, on February 13, 2022, Mr. Champ sent a letter to counsel for the Defendants Lich, Barber and Dichter, asking him to confirm whether his clients had communicated the Order in accordance with paragraph 3 of the Order. A copy of Mr. Champ’s letter to Keith Wilson is attached hereto as **Exhibit “F”**.
13. I am informed by Mr. Champ and do believe that, to date, Mr. Wilson has not confirmed whether his clients have complied with paragraph 3 of the Order.
14. I am aware that, on February 15, 2022 the Ontario Superior Court of Justice issued an Order restraining and enjoining persons with notice of the Order from directly or indirectly breaching Ottawa City By-Laws respecting: Open Air Fire; Fireworks; Noise; Use and Care of Roads; and Idling. A copy of the Court’s Order is attached hereto as **Exhibit “G”**.
15. In the time since the City’s injunction was granted, I have seen several posts on Twitter from Ottawa residents stating that the horn honking downtown has

continued nonetheless. Copies of such tweets are attached hereto as **Exhibit “H”**.

16. I make this affidavit in good faith and for no improper purpose.

AFFIRMED before me in the City of)
Ottawa, in the Province of Ontario,)
this 15th day of February, 2022.)

A commissioner for taking affidavits

Christine Johnson

Champt Associates

Trudy Moore

This is **Exhibit “A”** referred to
in the Affidavit of **TRUDY MOORE**,
affirmed before me in the City of Ottawa,
in the Province of Ontario,
this 15th day of February, 2022.



A Commissioner for Taking Oaths, etc.

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CANADA

Trucker protest: Judge grants injunction against honking in downtown Ottawa

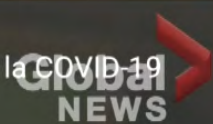
By Mike Blanchfield and Laura Osman • The Canadian Press

Posted February 7, 2022 2:54 pm ▼



EMERGENCY DEBATE
COVID-19 Protests

DÉBAT D'URGENCE
Manifestations en lien avec la COVID-19



WATCH: 'This pandemic has sucked for all Canadians:' Trudeau



-A A+

An [Ontario](#) judge has granted a 10-day injunction to prevent protesting truckers in downtown [Ottawa](#) from honking their horns incessantly as the mayor of the national capital city asked for a near doubling of his police force.

Ottawa Mayor Jim Watson said in a letter to Prime Minister [Justin Trudeau](#) and Ontario Premier [Doug Ford](#) that the city needed 1,800 more officers, in addition to his current contingent of 2,100 police and civilian members, to “quell the insurrection” the local police cannot contain.

READ MORE: [Ottawa police, politicians seek swift end to trucker convoy](#)

Steve Bell, the city’s deputy police chief, said a person from Ohio was arrested in connection with a threat against Ottawa police headquarters in downtown Ottawa. He said threats are coming in from across North America, and they are very taxing on already stretched resources.

STORY CONTINUES BELOW ADVERTISEMENT

Watson said the city is keeping a tally of all extraordinary costs associated with the demonstrations and will seek compensation from higher levels of government when the protest finally ends. Ottawa police now say the demonstrations in the central core are costing the city \$1.8 million to \$2.2 million per day for police alone.

2:00

Is the trucker protest changing the perception of the C...

Is the trucker protest changing the perception of the Canadian flag?

The daily cost will only grow if Watson's plea for more officers is granted.

Ottawa's request for more policing help came as Ontario Superior Court Justice Hugh McLean granted a temporary injunction that could bring an end to the cacophony of horns heard in streets for more than a week.

McLean said his order was temporary because he needs to hear more evidence, but that he heard enough to make this ruling as a protest against COVID-19 pandemic measures continues to paralyze neighbourhoods around Parliament Hill.

STORY CONTINUES BELOW ADVERTISEMENT

2:10**Ottawa requesting more Ontario resources to end prot...**

Ottawa requesting more Ontario resources to end protests

Paul Champ, a lawyer representing central Ottawa residents in a proposed multimillion-dollar class-action lawsuit, argued the loud and prolonged honking is causing irreparable harm.

Keith Wilson, representing three of the respondents in the case, had told McLean the ruling on the injunction would carry national importance.

McLean said he heard enough evidence that the continual blaring of horns was having an effect on residents that their right for “quiet, if we can use that term,” trumped the honking truckers’ right to protest.

But McLean said the injunction was temporary because a “myriad of people” may still wish to come before the court to be heard.

1:07

‘Well past the time’ for trucker convoy protest in Ottaw...

‘Well past the time’ for trucker convoy protest in Ottawa to end, Blair says

An injunction is a court order that a person cease certain behaviour. If they don’t comply, they can be charged with contempt of court.

TRENDING STORIES

LIVE UPDATES

Live blog: Trucker convoy protest enters 17th day in Ottawa

Ambassador Bridge border crossing remains closed as police arrest several protesters

STORY CONTINUES BELOW ADVERTISEMENT

Watson said the loud honking that has reverberated through downtown Ottawa for the last nine days is “tantamount to psychological warfare.”

Amid blaring truck horns, the demonstration has included open fires, makeshift feeding stations, encampments and numerous _ sometimes profane _ antigovernment signs.

In his letter for more police resources, Watson wrote: “We need your help to end this siege in the heart of our nation’s capital and in our residential neighbourhoods, and to regain control of our city.”

Ottawa’s city council voted to formally petition the federal government to assume responsibility for public safety in the parliamentary precinct to free up Ottawa officers to return to protect residential neighbourhoods.

Council also voted to ask the provincial and federal governments to provide support for businesses and employees who have lost income during the demonstration, and social support services that have helped Ottawa’s most vulnerable through the disruptions.

Ford said Sunday the province has given Ottawa everything the municipality has requested, and will continue to do so.

Federal Transport Minister Omar Alghabra said Monday the provinces have “extensive regulatory powers” they can use to go after companies who are allowing their equipment to be used for the illegal occupation in Ottawa and near the U.S. border in southern Alberta.

He said provinces can use their highway safety laws to suspend the commercial licences and insurance of the owners of commercial trucks “blockading the streets, days on end, in a city or on a highway.”

STORY CONTINUES BELOW ADVERTISEMENT

“It’s clear blockades of streets and bridges is against the law and should bring serious consequences for the owners,” Alhabra said during a federal update on the ongoing events that included several cabinet ministers.

READ MORE: [Police arson unit probing alleged attempt to start fire in Ottawa apartment building, says mayor](#)

Alhabra urged the Ontario government to learn lessons from how convoys of anti-COVID-19 protesters were managed successfully in other provinces over the weekend.

In Quebec City, a protest wrapped up Sunday evening with police handing out 170 tickets for noise complaints, parking and highway safety code violations.

About a dozen large trucks and farm vehicles continued Monday to sit by the main entrance to the Manitoba legislature.

1:37

Trucker protests: Ottawa police chief pleads for additi...

Trucker protests: Ottawa police chief pleads for additional resources from all levels of government

Federal Public Safety Minister Marco Mendicino said an “angry crowd” should not be allowed to dictate policies to fight COVID-19, and that protesters have “crossed the line of acceptable conduct” toward fellow Canadians in their bid to pressure the government.

STORY CONTINUES BELOW ADVERTISEMENT

“We believe in peace, order and good government in Canada,” he said.
“Canadians deserve to feel safe in their communities and no one is above the law.”

Emergency Preparedness Minister Bill Blair said it is not the role of any government to direct law-enforcement operations but he announced that a trilateral table of federal, provincial and municipal partners would help oversee the response.

READ MORE: [Singh urging emergency debate in House amid trucker convoy ‘crisis’](#)

On Monday evening, Trudeau appeared in the House of Commons to take part in an emergency debate on the protest in Ottawa. It was his first time there since before the holiday break. Last week, he was isolating after having

tested positive in COVID-19. He has also been staying at a location in the National Capital Region that was not being publicized for security reasons.

“Everyone is tired of COVID, but these protests are not the way to get through it,” he said, adding that it was legitimate to protest but not to disturb people in the community.

New federal Conservative interim leader Candice Bergen responded by saying that Canada had never been so divided.

There have been numerous calls for the federal government to manage the protest response.

STORY CONTINUES BELOW ADVERTISEMENT

Some local politicians have called on Trudeau to take a more active role in the situation.

Earlier Monday, Bergen wrote to request a meeting with Trudeau and other party leaders to discuss the ongoing protest in Ottawa.

She charged the prime minister with being “largely absent” since dismissing protesters as a “fringe” with “unacceptable views” last week.

Bergen wrote she hopes the leaders can talk about how to “take the temperature down” and find solutions that would allow the people of Ottawa

to get back to normal life.

1:07

‘Well past the time’ for trucker convoy protest in Ottaw...

‘Well past the time’ for trucker convoy protest in Ottawa to end, Blair says

Singh has accused Trudeau of a lack of leadership, saying the prime minister “needs to be present” to deal with the protest, but had “not been visible” so far.

Singh called for an emergency debate in the House of Commons and blamed the Liberals for using the protest as “a wedge issue.”

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TRENDING



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Ambassador Bridge border crossing remains closed as police arrest several protesters

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Four arrested as blockade of key B.C. border crossing stretches into second day: RCMP

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Trudeau government actively considering

emergency powers to end



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Live blog: Trucker convoy

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Trucker protests: Police clearing out Ambassador Bridge blockade

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Trucker protests: Windsor police begin clearing out Ambassador Bridge blockade

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Emergency Preparedness Minister Bill Blair says protesters are harming our country

14274 VIEWED

Trucker protests: Police remove blockade in Windsor, Ont. make arrest

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Trucker protests: Ottawa sees demonstrations enter 3rd weekend amid Ontario state of emergency

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CANADA

Trucker convoy: Here's what the 10-day injunction against horns includes

By [Amanda Connolly](#) • Global News

Posted February 8, 2022 12:38 pm ▼

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An Ottawa judge has granted an injunction to halt the persistent honking in downtown Ottawa. Litigation lawyer Fred Schumann breaks down the decision, and issues that could arise with enforcement.

**-A A+**

78

For Ottawa residents living downtown, Tuesday may mark their first taste of relief in 12 days as a temporary court injunction takes effect that orders truckers in the so-called “[Freedom Convoy](#)” to stop blaring their horns.

Ontario Superior Court Justice Hugh McLean did not grant the 60-day injunction against horns that had been sought by Paul Champ, the lawyer for the plaintiff — a 21-year-old public servant named Zexi Li.

READ MORE: [Judge grants injunction against honking in downtown Ottawa](#)

But McLean did grant an injunction for 10 days, and it remains to be seen whether that will be extended if demonstrators remain in the city.

2:25

Complications arise as Ottawa police commit to ending...

Complications arise as Ottawa police commit to ending convoy's 'occupation'

Here is what we know about the terms of the injunction.

STORY CONTINUES BELOW ADVERTISEMENT

What does this mean for horn-honking?

The wording of McLean's injunction states that anyone not working with a municipal fire department is prohibited from using "air horns or train horns" within the area covered by the injunction.

That applies to any streets in downtown Ottawa, defined in the injunction as "any streets north of Highway 417, otherwise known as the Queensway."

READ MORE: [Ottawa police, politicians seek swift end to trucker convoy](#)

A large part of the area has been hard-hit by the encampments set up by the trucker convoy over recent weeks. Police have launched more than 60 criminal investigations into alleged hateful, threatening or violent conduct against residents of the neighbourhoods that stretch from the highway north toward Parliament Hill, where residents have been forced to endure deafening honking for days.

STORY CONTINUES BELOW ADVERTISEMENT

2:44

Protesters opposing COVID mandates block crucial Ca...

Protesters opposing COVID mandates block crucial Canada-U.S. trade route

McLean's order also directed the three main organizers of the convoy to share the injunction through their social media as well as any other channels "to all persons they know who are or who have been participating" in the convoy between Jan. 28 and now.

What extra powers does it grant to police?

Included in the injunction is the authority for police to crack down on those who violate it.

TRENDING STORIES

Trudeau government actively considering emergency powers to end blockades: Blair

81 Four arrested as blockade of key B.C. border crossing stretches into second day: RCMP

STORY CONTINUES BELOW ADVERTISEMENT

Specifically, the injunction grants police the power to “arrest and remove any person who has knowledge of this Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order.”

Police still have the discretion to decide how and when — or if — to do so.

READ MORE: [What options do police have amid ‘illegal,’ ‘unlawful’ conduct?](#)

The injunction states that the “timing and manner” of enforcing it is up to police, as is the authority to release anyone arrested for violating the injunction if that person signs a written promise to abide by it.

Ottawa’s deputy police chief, Steve Bell, confirmed during a press conference on Tuesday that officers “will exercise their discretion in enforcing this order.”

In a Tweet on Tuesday evening, Ottawa police said it will enforce the order until Feb. 16 or any other date set by the court.

“All officers have been prepped on the terms of the order,” the Tweet said.

“Anyone in violation of the terms may be subject to detention or arrest.”

Ottawa Police  @OttawaPolice · Feb 8, 2022 

ATTENTION DEMONSTRATORS: @OttawaPolice will enforce an order prohibiting anyone from using air horns or train horns for any street north of Hwy 417 until February 16th, 2022 or any other date set by the Court.

Ottawa Police 

@OttawaPolice

All officers have been prepped on the terms of the order. Anyone in violation of the terms may be subject to detention or arrest.

ottawapolice.ca/en/news-and-co... #Ottawa #Ottnews

6:40 PM · Feb 8, 2022 

 188  Reply  Share

[Read 148 replies](#)

STORY CONTINUES BELOW ADVERTISEMENT

As well, the injunction also makes clear that ordering an end to the honking of horns is not an order for the convoy demonstrators to pack up and go home.

McLean states in it that so long as the terms of the injunction are respected, the organizers and anyone else taking part are free to continue so long as they engage in “a peaceful, lawful and safe protest.”

On Feb. 16, the court will meet again to hear whether the 10-day injunction should be extended.

What happens next?

Noise levels across much of the impacted areas appeared to be lower on Tuesday after weekend levels that saw local and federal officials saying that residents were hitting their “breaking point.”

Yasir Naqvi, Liberal MP for Ottawa Centre, described the noise as “torturous” for his constituents.

STORY CONTINUES BELOW ADVERTISEMENT

Catherine McKenney, local councillor for one of the hardest-hit wards, thanked Champ and Li after news of the injunction came out, saying that they had done “more than any level of government after 10 days of illegal occupation.”

“Residents in the downtown are finally getting action to stop some of the terror they’ve been living under,” McKenney wrote on Twitter.

READ MORE: [Ottawa police call for more personnel to ‘regain control’ of the city](#)

It remains unclear, however, how long the convoy will remain encamped in the city.

Police have been stepping up what Chief Peter Sloly called a “surge and contain” strategy over the past several days, though on Monday he warned an additional 1,800 officers are needed.

Sloly has said Ottawa police were “overwhelmed” by the number of people taking part in the convoy, which quickly set up staging areas and infrastructure in several locations across the city.

Over the weekend, the police said anyone bringing jerry cans of fuel to the convoy would be charged.

The extent of that enforcement is not yet fully clear.

3:20

Ottawa police take action as politicians seek swift end ...

Ottawa police take action as politicians seek swift end to trucker convoy protests

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OTTAWA | News

Meet the 21-year-old Ottawa woman who stopped the horns



Michael Woods

CTV News Ottawa Digital Multi-Skilled Journalist

[@michaelrwoods](#) | [Contact](#)

Published Tuesday, February 8, 2022 10:33AM EST

Last Updated Tuesday, February 8, 2022 6:44PM EST

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In the end, it wasn't the might of the city bureaucracy or law enforcement who got the constant blaring of truck horns to stop after more than week of terrorizing downtown Ottawa residents.

It was a 21-year-old resident of Centretown who had simply had enough.

"This situation, quite frankly, really ruffled my feathers," Zexi Li, the lead plaintiff in a proposed class-action lawsuit told CTV Morning Live on Tuesday. "I really, really felt that no matter what, I had to do something."

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"If that something is to be a voice and be a face—and even be even a target—for people to understand what really is going on here, I was more than willing to do so."

An Ontario Superior Court judge granted a 10-day injunction on Monday ordering an end to the incessant honking by truckers parked on downtown streets. Anyone who violates the injunction could be found in contempt, which brings stiffer penalties than regular bylaw charges.

"It's a big win, but it's also a baby step," Li said. "We really did deserve some peace and we're glad to have some, at least for the next 10 days."

Li said she has found the noise of the convoy protesters "unbearable."

"I don't even have the worst of it," she said. "There are so many people that live in my neighbourhood that can't live here anymore, that have to have escape their own home, and that quite frankly is completely unacceptable."

Christine Johnson, a lawyer with Champ and Associates and co-counsel in the matter, told CTV's Power Play that Li has suffered online abuse because of the lawsuit.

"While we've had an outpouring of support from many in the community, across the country, both towards our law firm and our very brave client we represent, she's had also received a lot of vile hatred both directed at her," Johnson said.

"It takes a lot of courage, as you can imagine, for a young woman to stand up on behalf of her neighbours ... It's been stressful. It's been overwhelming and I think she felt as though it was the right thing to do."

Paul Champ

@PaulChampLaw



This video is so wonderful. I live in Centretown but just outside the worst of the "horn zone". When I walked those streets I couldn't imagine how anyone could live through the constant blaring. Felt terrible for my neighbours. Glad our team and Zexi Li could help our community.

Mackenzie Gray  @Gray_Mackenzie

It is dead on Wellington right now. Not a honk can be heard and

only a few people wandering around #cdnpoli #ottnews

1:41 AM · Feb 8, 2022



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Li said she is also receiving a lot of messages of support from people who sympathetic to what Centretown residents are going through.

Asked how she thinks the trucker protest should be brought to an end, Li said she is surprised the situation has reached the point where her opinion on that is being sought.

"I think it's very interesting that my opinion is asked. Because while I do understand it, at the end of the day, I am a 21-year-old, I am just barely an adult. I can't believe that it's come to this point where people are asking me how I think it should end."

Li did say she agrees with the course Prime Minister Justin Trudeau has taken in not meeting with the convoy leaders.

"I fully agree that these people cannot be negotiated with," she said.

The proposed class-action lawsuit is seeking \$9.8 million in damages on behalf of Centretown residents. The next hearing, on whether the injunction will be extended, is set for Feb. 16.

"I can only hope that some kind of reparations will be seen for people in my community, and that at the very least people recognize the severity of what's going on here and what has happened to us," Li said.

"A lot of people have trauma because of this now, and it's trauma that I personally don't think should have ever happened to them."

Ottawa police say people using horns in violation of the court order may be arrested and charged for contravening it. Possible penalties include up to two years imprisonment.

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Zexi Li is the lead plaintiff in a proposed class action lawsuit on behalf of Centretown residents who have endured relentless noise due to the truck protests. Li says it was all about helping her community. (Leah Larocque/CTV News Ottawa)

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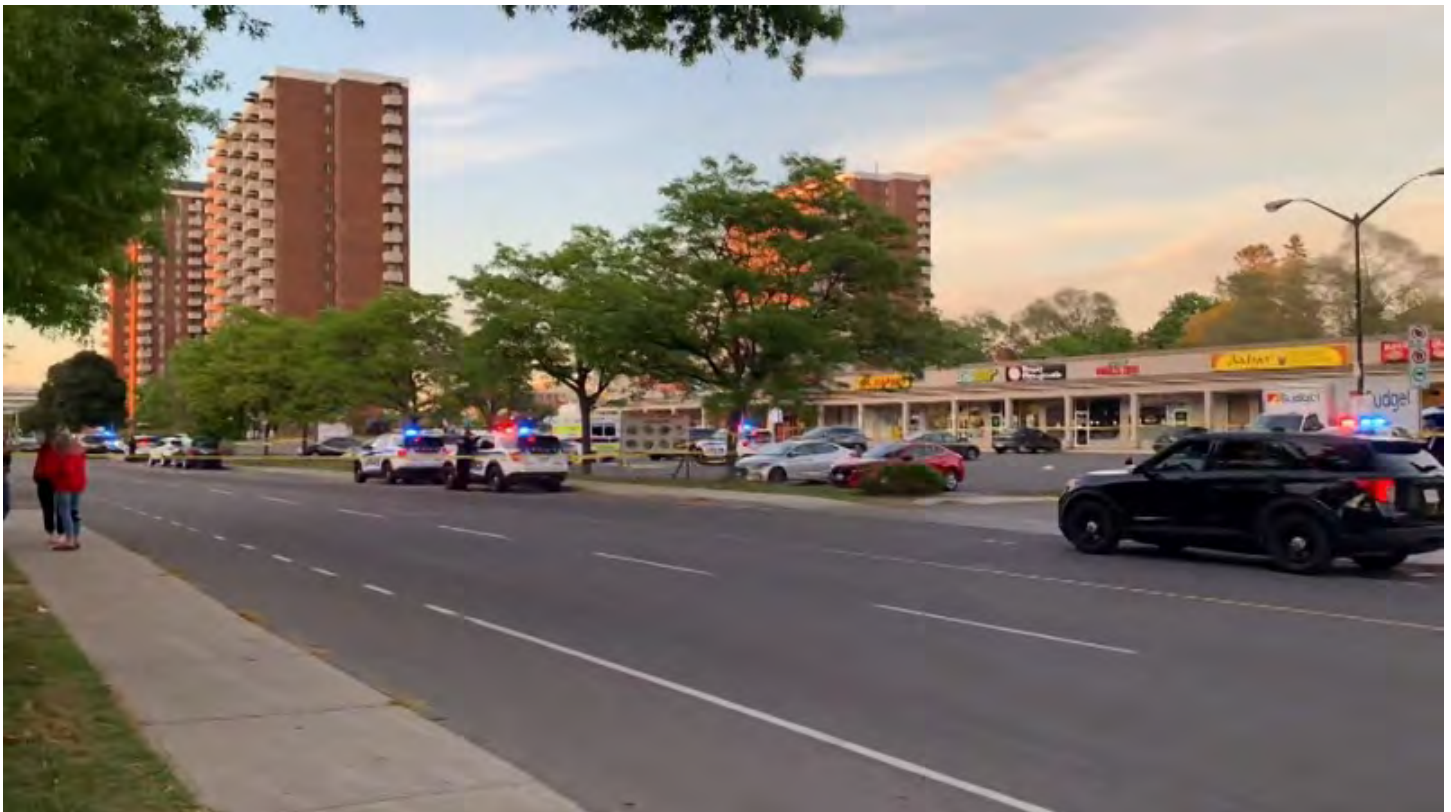
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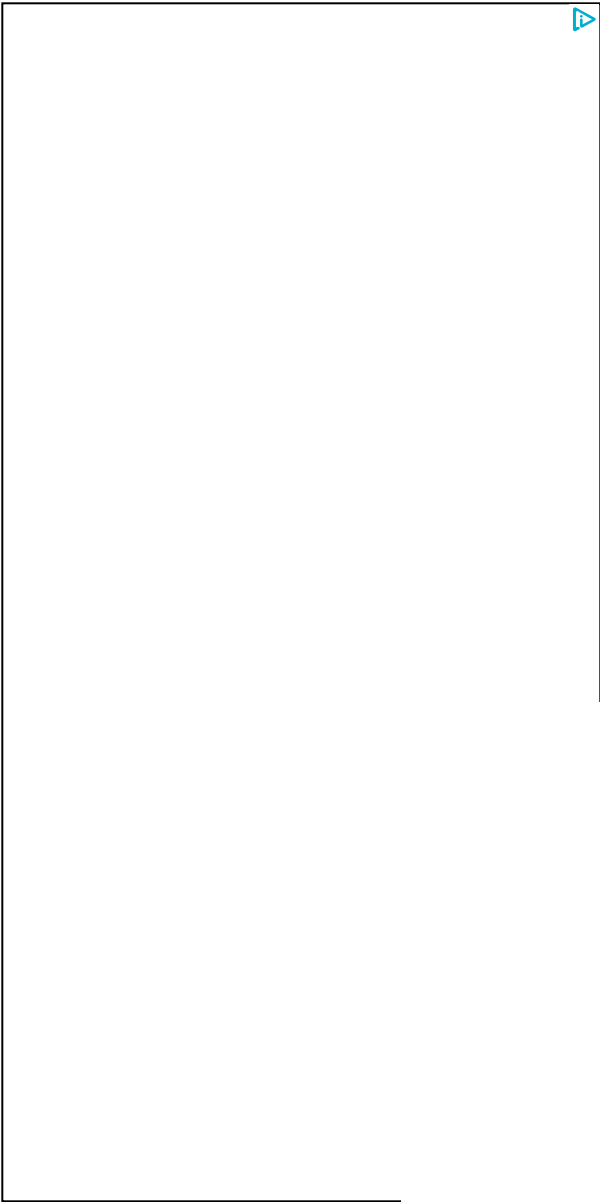
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Judge grants interim injunction against honking at Ottawa protest



Postmedia News
Blair Crawford

Feb 08, 2022 • 5 days ago • 4 minute read • [Join the conversation](#)



People wave flags on top of a truck in front of Parliament Hill as truckers and their supporters continue to protest against the COVID-19 vaccine mandates in Ottawa, Ontario, Canada, February 6, 2022. PHOTO BY PATRICK DOYLE /REUTERS

The judge says, “Silence!”

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Ontario Superior Court Justice Hugh McLean granted a temporary 10-day injunction Monday, banning the horn honking and air horn blowing that has echoed through downtown Ottawa since demonstrators arrived in the city on Jan. 28. The ongoing noisy protest has interfered with “citizens’ right to quiet,” he said.

“People have a right to protest various things in various ways,” McLean said. But he agreed with lawyer Paul Champ that the incessant noise could cause long-term and irreparable hearing damage.

“Tooting a horn is not an expression of any great thought,” McLean noted wryly, even allowing for the “potential artistic merit” of the truckers’ creative use of patterns and beats.

The injunction takes effect immediately. McLean also rejected the demonstrators’ request to blow their horns for five minutes once a day at 5 p.m.

STORY CONTINUES BELOW



“The only purpose of this (horn blowing) is to bring attention to this protest,” McLean said. “There’s no need for that anymore. The public is fully aware of what’s going on.”

The plaintiff in the case is 21-year-old downtown resident, Zexi Li. In his evidence, Champ said Li has measured the noise in her apartment at more than 80 decibels, which he likened to “having a lawn mower running in her living room, 24 hours a day, seven days a week.” Others have registered noise at street level in excess of 120 decibels when so called “train horns” are sounded.

While Li is the only one named in the case, the \$9.8-million class action is open to as many as 6,000 downtown residents who live in or close to the demonstration's "red zone."

STORY CONTINUES BELOW

"So happy!" Li texted this newspaper immediately after the judge's decision. "Excited for 10 (hopeful) days of peace!!!"



Zexi Li, who has launched a class-action lawsuit against the Ottawa trucker convoy due the noise etc., is pictured on Monday, Feb. 7, 2022. ERROL MCGIHON/Postmedia

Li agreed to stand as plaintiff out of frustration with the hands-off tactics adopted by the city and police during the first week of the demonstration.

“I live by the words, ‘I can make it through anything,’ ” Li said, before Monday’s hearing got underway. “But I know a lot of people aren’t able to and my heart just hurts the most for them.

“I’m not seeking confrontation, but I am seeking justice for the people they’re harming every single day they’re here. It’s confrontation out of necessity.”

Since her name became public, Li has been targeted and harassed, Champ told the hearing, which took place virtually over Zoom.

STORY CONTINUES BELOW

“My client is unbelievably brave,” he said. “My client has been subject to threats, to vile abuse online. Her phone number has been put online and people have been calling her.”

Li was asked by this newspaper if she had any regrets about taking part.

“Absolutely not. I am sick and tired of shedding tears for my neighbours. I’m sick and tired of hearing about how much fear there is in the streets,” she said.

“I’m utterly disappointed by the city’s reaction to what is going on. It took 10 days for any action to be taken. It took 10 days for our pleas to be heard. I can only hope that there will be more management of the situation from here on out,” she said.

“There is a peaceful way to protest. This is not it. The way they’re going about it delegitimizes their cause and, in fact, causes more irreparable harm to the people they say

they're trying to fight for. They really do need to recognize the damage their doing by being here and participating in it.”

STORY CONTINUES BELOW

The statement names as defendants the convoy's organizers: Chris Barber of Swift Current, Sask., Benjamin Dichter of Toronto, Tamara Lich of Medicine Hat, Alta., and Patrick King of Red Deer, Alta. It also names 60 “John Does” — drivers of semi-trucks in the protest who may later be identified as having taken part in the noise-making.

Lawyer Keith Wilson of the Calgary-based Justice Centre for Constitutional Freedom, who represented three of the four named defendants, said the protest was a matter of free expression. Two of his three clients don't have trucks and the third has not used his horn, he said.

"This is a spontaneous grassroots phenomena that started in Canada and is now spreading around the world in response to what we've all had to endure for the last two years. It's an effort to end that harm and that hardship," Wilson said.

STORY CONTINUES BELOW

He provided court with affidavits in support of the truckers.

"There is more evidence before you that downtown Ottawa residents don't feel they're being harmed and this is part of the democratic process," Wilson told the judge.

Founded in 2010, Justice Centre for Constitutional Freedoms has taken on a wide range of conservative and right-wing causes. It's representing the parents of an Ottawa school girl in a Human Rights Tribunal of Ontario hearing over gender identity teaching by the Ottawa-Carleton District School Board. In another, it's suing the Nova Scotia Registrar of Vehicles after it denied a pensioner, Lorne Grabher, his "GRABHER" vanity plate, saying it was "socially unacceptable." In 2017, the centre unsuccessfully fought a decision by the Ottawa Public Library to cancel a screening of the anti-immigration film, Killing Europe.

At the start of Monday's hearing, McLean addressed the issue of a racist slur that was posted in the Zoom chat section during Saturday's first hearing. McLean did not see the slur, but urged the lawyers who did to complain to the Crown attorney's office so that it can be investigated for potential contempt of court charges.

The matter will be back in court on Feb. 16 when the temporary 10-day injunction expires.



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Politics

Court grants injunction to silence honking in downtown Ottawa for 10 days

Judge said taking protesters' horns away does not rob them of their right to protest

[Catharine Tunney](#) · CBC News · Posted: Feb 07, 2022 2:44 PM ET | Last Updated: February 7



A person leaves a counter-protest as a protest against COVID-19 restrictions, marked by the constant honking of truck horns, continues into its second week in Ottawa on Saturday, Feb. 5, 2022. (Justin Tang/The Canadian Press)

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An Ottawa judge has granted an interim injunction seeking to silence the honking horns that have plagued residents of downtown Ottawa for the past 11 days.

"Tooting a horn is not an expression of any great thought I'm aware of," said Justice Hugh McLean during a court hearing in Ottawa Monday.

The temporary injunction order is effective immediately and is meant to silence the horns at all hours for the next 10 days. It covers the zone north of the Queensway, the city's main east-west artery.

Lawyer Paul Champ said air horns and train horns are blasted at sound levels of 105 to 120 decibels for prolonged periods and can cause permanent hearing damage.

"Every hour this goes by, there is harm to the people of Centretown," he told the hearing.

- [**'It has to stop': Trudeau accuses protesters of blockading democracy during Commons debate**](#)
- [**Ottawa declares state of emergency as police boost enforcement, target protest's fuel supply**](#)

Keith Wilson, a lawyer representing three protest organizers named in the suit, argued that his clients — Tamara Lich, Benjamin Dichter and Chris Barber — are not personally responsible for the noise.

He also said that what Ottawa is experiencing is a grassroots protest against pandemic measures.

"There is more evidence before you that downtown Ottawa residents don't feel they're being harmed and this is part of the democratic process," he said.





A cyclist rides toward a police barricade where trucks are lined up near Parliament Hill on Wednesday, Feb. 2, 2022 in Ottawa. (Adrian Wyld/The Canadian Press)

The judge said that while the participants have a right to protest, taking their horns away would not rob them of that right.

The request for an injunction came out of a proposed class-action lawsuit filed with the Ontario Superior Court of Justice on Friday by lawyer Champ on behalf of his client Zexi Li, a 21-year-old public servant.

WATCH | Injunction granted to silence honking in downtown Ottawa:



Ottawa police ask for reinforcement as courts silence horns

6 days ago | 2:40

Ottawa police are asking for more reinforcements to fight protests that city officials have started calling an 'insurrection.' Meanwhile, a court injunction silenced the honking horns to the relief of area residents. 2:40

It sought an injunction prohibiting the defendants, or any other participant in the anti-vaccine mandate convoy protest, from using vehicle horns in the vicinity of downtown.

According to the order, police are now authorized to arrest and remove anyone they believe is aware of the order and is contravening it. They also have the discretion to release anyone from arrest if that person agrees in writing to obey the order.

The defendants are also ordered to publicize the injunction on social media.

The court is adjourned until Feb. 16, at which point all sides will discuss continuing the order.

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Judge orders truckers' horns silenced for 10 days

Blair Crawford
Feb 08, 2022 • 5 days ago • 5 minute read



A man covers his ears while passing honking trucks parked on Wellington Street this week. PHOTO BY TONY CALDWELL /Postmedia

The judge says, “Silence!”

STORY CONTINUES BELOW

Ontario Superior Court Justice Hugh McLean granted a temporary 10-day injunction Monday, banning the horn honking and air horn blowing that has echoed through downtown Ottawa since demonstrators arrived in the city on Jan. 28. The ongoing noisy protest has interfered with “citizens’ right to quiet,” he said.



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STORY CONTINUES BELOW

Zexi Li's lawyer said she has measured the noise in her apartment at more than 80 decibels. PHOTO BY ERROL MCGIHON /Postmedia

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"I'm not seeking confrontation, but I am seeking justice for the people they're harming every single day they're here. It's confrontation out of necessity."

Since her name became public, Li has been targeted and harassed, Champ told the hearing, which took place virtually over Zoom.

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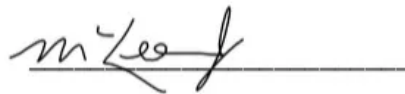
“My client is unbelievably brave,” he said. “My client has been subject to threats, to vile abuse online. Her phone number has been put online and people have been calling her.”

section 101 of the *Courts of Justice Act*, Rule 40.01 of the *Rules of Civil Procedure*, and section 12 of the *Class Proceedings Act*.

2. **THIS COURT ORDERS** that any persons having notice of this Order are hereby restrained and enjoined from using air horns or train horns, other than those on a motor vehicle of a municipal fire department, in the geographic location anywhere in the City of Ottawa, in the vicinity of downtown Ottawa, being any streets north of Highway 417, otherwise known as the Queensway, for 10 days from the date of this Order.
3. **THIS COURT ORDERS** that the Defendants Barber, Dichter and Lich forthwith direct that they communicate this Order through their social media and other channels to all persons they know who are or who have been participating in the Freedom Convoy Protest in Ottawa, Ontario, from January 28, 2022, to the present day;
4. **THIS COURT ORDERS** that any police officer with the Ottawa Police Service, and/or the appropriate police authority in the jurisdiction in question (the "Police"), shall have authorization to arrest and remove any person who has knowledge of this Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order.
5. **THIS COURT ORDERS** that the Police shall retain discretion:
 - a. as to the timing and manner of enforcement of this Order, and specifically retain discretion as to the timing and manner of arrest and removal of any person pursuant to this Order; and
 - b. to detain and release any person without arrest who the Police have reasonable and probable grounds to believe is contravening, or has contravened, any provisions of this Order, upon that person agreeing in writing to abide by this Order.
6. **THIS COURT ORDERS** that any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to this Order shall have authorization to release that person from arrest upon that person agreeing in writing to obey this Order;
7. **THIS COURT ORDERS** that, provided the terms of this Order are complied with, the Defendants and other persons remain at liberty to engage in a peaceful, lawful and safe protest.
8. **NOTICE OF THIS ORDER** may be given by: posting copies of this Order in or around downtown Ottawa; reading the Order to any person, including but not limited to reading the Order over an amplification system publishing this Order

online, including on social media accounts associated with the Defendants, and by distributing copies of this Order to media including CBC, Radio-Canada, CTV, Global News and all daily newspapers in the Ottawa-Gatineau area.

9. **THIS ORDER** shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.
10. **THIS COURT ORDERS** that the costs of this motion shall be in the cause.
11. **THIS COURT ORDERS** that the parties shall appear before the Court in Ottawa by videoconference on February 16, 2022 at 10:00am for the hearing of a motion to continue this Order.

A handwritten signature in black ink, appearing to read 'M. Lee', is written over a horizontal line.

Li was asked by this newspaper if she had any regrets about taking part.

“Absolutely not. I am sick and tired of shedding tears for my neighbours. I’m sick and tired of hearing about how much fear there is in the streets,” she said.

“I’m utterly disappointed by the city’s reaction to what is going on. It took 10 days for any action to be taken. It took 10 days for our pleas to be heard. I can only hope that there will be more management of the situation from here on out,” she said.

“There is a peaceful way to protest. This is not it. The way they’re going about it delegitimizes their cause and, in fact, causes more irreparable harm to the people they say they’re trying to fight for. They really do need to recognize the damage they’re doing by being here and participating in it.”

STORY CONTINUES BELOW

The statement names as defendants the convoy's organizers: Chris Barber of Swift Current, Sask., Benjamin Dichter of Toronto, Tamara Lich of Medicine Hat, Alta., and Patrick King of Red Deer, Alta. It also names 60 "John Does" — drivers of semi-trucks in the protest who may later be identified as having taken part in the noise-making.

Lawyer Keith Wilson of the Calgary-based Justice Centre for Constitutional Freedom, who represented three of the four named defendants, said the protest was a matter of free expression. Two of his three clients don't have trucks and the third has not used his horn, he said.

"This is a spontaneous grassroots phenomena that started in Canada and is now spreading around the world in response to what we've all had to endure for the last two years. It's an effort to end that harm and that hardship," Wilson said.

STORY CONTINUES BELOW

Canada: Overhead sight at the freedom convoy 2n...



He provided court with affidavits in support of the truckers.

“There is more evidence before you that downtown Ottawa residents don’t feel they’re being harmed and this is part of the democratic process,” Wilson told the judge.

Founded in 2010, Justice Centre for Constitutional Freedoms has taken on a wide range of conservative and right-wing causes. It’s representing the parents of an Ottawa school girl in a Human Rights Tribunal of Ontario hearing over gender identity teaching by the Ottawa-Carleton District School Board. In another, it’s suing the Nova Scotia Registrar of Vehicles after it denied a pensioner, Lorne Grabher, his “GRABHER” vanity plate, saying it was “socially unacceptable.” In 2017, the centre unsuccessfully fought a decision by the Ottawa Public Library to cancel a screening of the anti-immigration film, Killing Europe.

STORY CONTINUES BELOW

At the start of Monday’s hearing, McLean addressed the issue of a racist slur that was posted in the Zoom chat section during Saturday’s first hearing. McLean did not see the slur, but urged the lawyers who did to complain to the Crown attorney’s office so that it can be investigated for potential contempt of court charges.

The matter will be back in court on Feb. 16 when the temporary 10-day injunction expires.

READ MORE COVERAGE OF THE ANTI-VACCINE MANDATE PROTEST:

- [Judge orders truckers' horns silenced](#)
- [Police arson unit probes Ottawa downtown apartment fire allegation in heat of anti-mandate protest](#)
- [Hoyeck: Whatever the truck protest is about, It's not about the facts](#)
- [Abdulla: Trucker protest — each side needs to offer something reasonable](#)
- [Protesters say they will stay put despite increased police enforcement](#)
- ['Freedom Convoy' raises millions on Christian site after GoFundMe freezes donations](#)
- [Egan: With fresh reinforcements, finally some pushback from police](#)
- [Truck convoy: State of emergency declared; police announce arrests; people bringing 'material' supports to protesters — including gas — could be subject to arrest, police say](#)
- [Mayor declares emergency after weekend of chaos; police begin choking off fuel supply to protesting truckers](#)
- [Trucker protest noise may lead to 'chronic annoyance and distress'](#)
- [Answers to your most common questions on the Ottawa truck protest](#)



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TRENDING

- 1 Two members of military counter-terrorism unit under investigation for allegedly taking part in convoy protests**
- 2 Trucker convoy: Counter-protesters block convoy traffic; Convoy organizers plan to 'consolidate' efforts around Parliament Hill; Arrests in Windsor as Ambassador Bridge cleared**
- 3 Truck carrying 2,000 firearms allegedly stolen in Peterborough, Ont., police say**
- 4 Counter-protesters blockade Freedom Convoy on Riverside Drive**
- 5 Unruly protesters prompt early closure of two downtown grocery stores**

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This is **Exhibit “B”** referred to
in the Affidavit of **TRUDY MOORE**,
affirmed before me in the City of Ottawa,
in the Province of Ontario,
this 15th day of February, 2022.

A handwritten signature in black ink, appearing to be 'J. G. ...', written over a horizontal line.

A Commissioner for Taking Oaths, etc.



7 février 2022 14h53 / Mis à jour à 17h49

Camionneurs: interdiction de klaxonner pendant 10 jours à Ottawa



CHARLES-ANTOINE GAGNON
Le Droit

Un juge de la Cour supérieure de l'Ontario a émis lundi après-midi une injonction pour interdire l'usage des klaxons pendant 10 jours par les

camionneurs qui manifestent à Ottawa pour la levée des restrictions et obligations sanitaires liées à la COVID-19.

La mesure est immédiate et durera jusqu'au 17 février. Le tribunal tiendra une audience le 16 février pour faire le point.

La décision du juge Hugh McLean a suivi une audience où l'avocat de la plaignante Zexi Li, qui habite dans le centre-ville, a notamment indiqué que le bruit incessant est nuisible et dommageable pour l'ouïe de la femme.

La demande d'injonction s'inscrit dans une demande de recours collectif de 9,8 millions de dollars contre quatre des organisateurs de la manifestation, soit Chris Barber, Benjamin Dichter, Tamara Lich, Patrick King et soixante John Doe, soit des camionneurs non identifiés.

Le mouvement de protestation en était lundi à sa onzième journée dans la capitale canadienne. En rendant sa décision, le juge a convenu que les arguments de la partie demanderesse voulant que les coups de klaxon des mastodontes soient nuisibles sont valides, et que les niveaux de décibels peuvent causer des torts irréparables à l'ouïe.

Le juge a tenu à préciser que les gens ont le droit de manifester contre plusieurs dossiers de différentes façons.



les camionneurs ont proposé lundi matin de ne faire retentir les klaxons que pendant cinq minutes par jour et ce, à 17h. Cette proposition a été refusée par le juge McLean.

— LE DROIT, ETIENNE RANGER

«Cela est enchâssé dans le Common Law et dans la Charte (des droits et libertés), a mentionné le magistrat en rendant sa décision. Toutefois, dans les circonstances qui nous retiennent ici, nous avons la manière de s'exprimer, qui est l'usage continu du klaxon par des véhicules, des camions en particulier, qui a un effet (nocif) sur les citoyens qui habitent dans le secteur de la manifestation».

L'avocat de trois des parties ciblées par le recours collectif, M^e Ken Wilson, a indiqué devant le juge qu'après avoir accepté de n'utiliser les klaxons qu'entre 20h et 8h, les camionneurs ont proposé lundi matin de ne les faire retentir que pendant cinq minutes par jour et ce, à 17h. Le juge McLean a refusé la proposition.

«L'inférence que j'en fais est que les preuves venant des défendeurs potentiels comprennent le fait qu'il y a une nature dommageable à l'usage de ces klaxons», a observé le juge McLean à la suite de la proposition des camionneurs.

«La seule raison pour les klaxons est d'attirer l'attention à la manifestation. Selon moi, il n'y a plus besoin de faire ça. Le public comprend entièrement ce qui se

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passe au centre-ville d'Ottawa», a continué le juge.

M^e Wilson a tenu à mentionner au juge que la manifestation «a été pacifique, que les résidents n'ont pas été restreints dans leur capacité à se déplacer et que la situation, et nous le reconnaissons, est le bruit causé par les coups de klaxon».

La demande pour recours collectif signée par M^e Paul Champ, l'avocat de la plaignante, mentionne que les coups de klaxon des camions, dont un est celui d'un train, émettent des sons variant entre 100 et 150 décibels.

«Ces klaxons ne sont pas censés être utilisés plus que quelques secondes en raison de la dangerosité des niveaux de son et parce que cela peut causer des dommages permanents à l'oreille humaine», est-il notamment spécifié, tout en précisant qu'ils ont été utilisés de manière continue de 12 à 16 heures par jour.

Le document mentionne aussi que le son dans les résidences près des camions est d'environ 80 décibels alors que le son normal dans un domicile se situe entre 35 et 40 décibels. Une tondeuse à gazon peut générer de 88 à 94 décibels, souligne le document de cour.

Merci de vous abonner pour accéder en tout temps à la totalité de nos contenus. En vous abonnant, vous soutenez concrètement un **journalisme local de qualité**, fiable, au service de nos régions.

JE M'ABONNE



ICI Ottawa-Gatineau

Un juge accorde une injonction de 10 jours contre les klaxons des camionneurs



Le chef de la police d'Ottawa a lancé lundi un appel pressant aux autorités fédérale, provinciale et municipale.

PHOTO : LA PRESSE CANADIENNE / JUSTIN TANG

Radio-Canada

le 7 février 2022

Un juge de la Cour supérieure de l'Ontario a tranché lundi en faveur des résidents du centre-ville qui demandaient cette injonction qui a pour but d'empêcher les camionneurs de klaxonner sans relâche dans le centre-ville d'Ottawa. L'injonction est d'une durée de 10 jours.

Le juge Hugh McLean a précisé que cette injonction est temporaire puisqu'il a besoin d'entendre davantage de preuves. Cependant, il a mentionné en avoir suffisamment entendu pour rendre sa décision lundi.

La demande a été faite par des résidents d'Ottawa qui cherchaient à obtenir une injonction interdisant la poursuite des bruits de sirènes et des klaxons répétitifs depuis maintenant 11 jours.

Pour Emilie Taman, l'avocate au cabinet qui représente ces résidents, il s'agit d'une victoire pour leur cliente, Zexi Li, cette fonctionnaire de 21 ans qui a entrepris le recours collectif. Dans son appartement, le son des klaxons enregistrait 85 décibels, ce qui équivaut au niveau sonore d'une tondeuse.

« On est particulièrement ravi, surtout pour notre cliente. Elle est extrêmement courageuse. Elle s'est mise à l'avant pour toute sa communauté. Elle est vraiment très très heureuse », a commenté Emilie Taman.

Tous les corps policiers qui ont pouvoir à Ottawa pourront faire respecter cette injonction. Les conséquences iront des amendes à des peines d'emprisonnement.

Il est possible que cette interdiction soit prolongée si des résidents en font la demande.

À lire aussi :

- La Ville d'Ottawa réclame 1800 personnes en renfort immédiatement pour sortir de la crise
- Déplacer les camions du centre-ville est presque impossible, disent des experts
- Une opération policière au site Coventry donne lieu à 2 arrestations à Ottawa
- Manifestation à Ottawa : le maire Watson déclare l'état d'urgence

L'avocat Paul Champ a mentionné la semaine dernière que ces bruits nuisaient considérablement à l'utilisation et à la jouissance privée des maisons et que ce comportement était complètement déraisonnable et injustifié.

Les citoyens demandent 100 \$, par jour, pour chaque personne qui a souffert des bruits causés par les camionneurs et par les autres manifestants. Ils ont également fait savoir que des personnes ont subi des blessures, des dommages, de la détresse mentale, de la détresse émotionnelle, de la difficulté à dormir, des difficultés de concentration et des maux de tête.

La requête contient des allégations qui n'ont pas été prouvées devant les tribunaux.

L'avocat qui représente les trois personnes nommées dans l'action collective proposée, Keith Wilson, a répliqué qu'un seul de ses trois clients est propriétaire d'un camion, et qu'il n'a pas utilisé son klaxon, selon lui.

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L'avocat Keith Wilson a aussi ajouté que les camionneurs et leurs sympathisants ont convenu de ne pas les faire retentir entre 20 h et 8 h.

La demande de dédommagement de 9,8 millions \$ n'a pas fait partie des audiences aujourd'hui.

Avec les informations de Nafi Alibert, de Catherine Morasse et de La Presse canadienne

This is **Exhibit “C”** referred to
in the Affidavit of **TRUDY MOORE**,
affirmed before me in the City of Ottawa,
in the Province of Ontario,
this 15th day of February, 2022.

A handwritten signature in black ink, appearing to be 'J. G.', written over a horizontal line.

A Commissioner for Taking Oaths, etc.



OTTAWA POLICE SERVICE
SERVICE DE POLICE D'OTTAWA
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Feedback

Enforcement of Court Order in Downtown Core

Posted On Tuesday February 08, 2022

Like 68

Tweet



Subscribe

FOR IMMEDIATE RELEASE: Tuesday, February 8, 2022 6:34pm

(Ottawa) – On February 7, 2022, Justice McLean of the Ontario Superior Court of Justice granted a temporary injunction restraining any person, who has notice of the court order, from using air horns or train horns, other than those on a motor vehicle of a municipal fire department.

This order applies to the downtown core in the City of Ottawa which is defined as any streets north of Highway 417 (Queensway). The injunction has been granted for a period of 10 days (i.e. until end of day February 17, 2022) and will be enforced by the Ottawa Police Service and its partners effective immediately.

If a person, with reasonable notice is believed to be

1. using air horns or train horns, other than those on a motor vehicle of a municipal fire department; and
2. is in the vicinity of downtown Ottawa: this geographical location includes the city's downtown, and specifically, any streets north of Highway 417 (Queensway), for a period of 10 days.

Then they may be arrested for contravening the Court Order or they may be arrested and/or charged under Section 127 of the *Criminal Code*.

If a person is arrested for contravening the Court Order and the person indicates, in writing, that they will obey and abide by the Court Order, they may be released.

If a person is arrested for contravening the Court Order and they refuse to indicate in writing that they will obey and abide by the Court Order, they may be taken to the Superior Court for civil contempt proceedings and criminal contempt prosecutions.

Penalties include up to two years imprisonment and/or another form of punishment as deemed appropriate at time of conviction.

- 30 -

CONTACT:

Media Relations Section

Tel: 613-236-1222, ext. 5366

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Contact Us

Ottawa Police Service

P.O. Box 9634 Station T, Ottawa, Ontario, K1G 6H5

T: 613-236-1222, TTY: 613-232-1123

Email Us

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Ottawa Police Service P.O. Box 9634 Station T, Ottawa, Ontario, K1G 6H5, T: 613-236-1222, TTY service for the deaf, deafened and hard of hearing: 613-232-1123

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Offence-related property, including vehicles, may be seized as part of the offence. The vehicles may be detained and, following a conviction, possibly forfeited.

Charges or convictions related to the unlawful activity associated with the demonstration may lead to denial in crossing the USA border.

Child and youth safety at Ottawa demonstrations (February 9, 2022)

(Ottawa) – The Ottawa Police Service (OPS), in collaboration with The Children's Aid Society of Ottawa (CASO), will work to ensure the safety and wellbeing of children and youth at the current demonstration in the downtown core.

Ottawa police officers are aware of concerns about child and youth attendance at the demonstration.

Police have a role to play in observing any potential dangers and will report them immediately to CASO. In matters that involve a child or youth who is in the protest area, CASO will work closely with the OPS to respond to the concern. Child and youth wellbeing and safety is top of mind for CASO.

CASO continues to play its role in ensuring the safety and wellbeing of children and youth in the community. The Society has a duty to investigate whenever there are allegations of abuse or neglect that suggest a child or youth may be in need of protection.

There have been ongoing reports to CASO regarding child welfare concerns amid the Ottawa protest. CASO considers all information received from the public to determine the best response.

If there are concerns about the safety or maltreatment of a child or youth in Ottawa, please call CASO at 613-747-7800, or email yourcasquestion@casott.on.ca.

COURT ORDER

Enforcement of Court Order in Downtown Core (February 8, 2022)

On February 7, 2022, Justice McLean of the Ontario Superior Court of Justice granted an temporary injunction restraining any person, who has notice of the

court order, from using air horns or train horns, other than those on a motor vehicle of a municipal fire department. This order applies to the downtown core in the City of Ottawa which is defined as any streets north of Highway 417 (Queensway). The injunction has been granted for a period of 10 days (i.e. until end of day February 17, 2022) and will be enforced by the Ottawa Police Service and its partners effective immediately.

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Ottawa Police Service Make 23 Arrests in Relation to Demonstration – 1,300 Tickets Issued (February 8, 2022)

(Ottawa) – The Ottawa Police Service and its partners are continuing to work to put an end to the unlawful demonstrations in the downtown core, respond to calls for service, and improve neighbourhood safety.

We continue to advise demonstrators not to enter Ottawa, and to go home.

As of 12:00 PM EST, the Ottawa Police Service can report:

Enforcement and Charges Laid

- Police have responded to over 850 calls for service in relation to the demonstrations since they began.
- Police continue to prevent people from supplying fuel and other material supports to demonstrators.

Court File No: CV-22-00088514-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR JUSTICE MCLEAN) MONDAY, THE 7th DAY
)
) OF FEBRUARY, 2022

BETWEEN:

ZEXI LI

Plaintiff/Moving Party

- and -

**CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5,
JOHN DOE 6, JOHN DOE 7, JOHN DOE 8, JOHN DOE 9, JOHN DOE 10,
JOHN DOE 11, JOHN DOE 12, JOHN DOE 13, JOHN DOE 14, JOHN DOE 15,
JOHN DOE 16, JOHN DOE 17, JOHN DOE 18, JOHN DOE 19, JOHN DOE 20,
JOHN DOE 21, JOHN DOE 22, JOHN DOE 23, JOHN DOE 24, JOHN DOE 25,
JOHN DOE 26, JOHN DOE 27, JOHN DOE 28, JOHN DOE 29, JOHN DOE 30,
JOHN DOE 31, JOHN DOE 32, JOHN DOE 33, JOHN DOE 34, JOHN DOE 35,
JOHN DOE 36, JOHN DOE 37, JOHN DOE 38, JOHN DOE 39, JOHN DOE 40,
JOHN DOE 41, JOHN DOE 42, JOHN DOE 43, JOHN DOE 44, JOHN DOE 45,
JOHN DOE 46, JOHN DOE 47, JOHN DOE 48, JOHN DOE 49, JOHN DOE 50,
JOHN DOE 51, JOHN DOE 52, JOHN DOE 53, JOHN DOE 54, JOHN DOE 55,
JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60**

Defendants/Responding Parties

ORDER

THIS MOTION, made by the Plaintiff for an interlocutory injunction and costs, pursuant to section 101 of the *Courts of Justice Act* and Rule 40.01 of the *Rules of Civil Procedure*, was heard at Ottawa on February 5 and 7, 2022 by videoconference.

UPON READING the motion records of the parties and **UPON HEARING** the oral arguments made by counsel for the parties by Zoom,

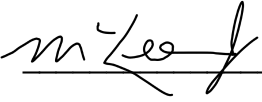
1. **THIS COURT ORDERS** that an interlocutory injunction is granted, pursuant to

section 101 of the *Courts of Justice Act*, Rule 40.01 of the *Rules of Civil Procedure*, and section 12 of the *Class Proceedings Act*.

2. **THIS COURT ORDERS** that any persons having notice of this Order are hereby restrained and enjoined from using air horns or train horns, other than those on a motor vehicle of a municipal fire department, in the geographic location anywhere in the City of Ottawa, in the vicinity of downtown Ottawa, being any streets north of Highway 417, otherwise known as the Queensway, for 10 days from the date of this Order.
3. THIS COURT ORDERS that the Defendants Barber, Dichter and Lich forthwith direct that they communicate this Order through their social media and other channels to all persons they know who are or who have been participating in the Freedom Convoy Protest in Ottawa, Ontario, from January 28, 2022, to the present day;
4. **THIS COURT ORDERS** that any police officer with the Ottawa Police Service, and/or the appropriate police authority in the jurisdiction in question (the "Police"), shall have authorization to arrest and remove any person who has knowledge of this Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order.
5. **THIS COURT ORDERS** that the Police shall retain discretion:
 - a. as to the timing and manner of enforcement of this Order, and specifically retain discretion as to the timing and manner of arrest and removal of any person pursuant to this Order; and
 - b. to detain and release any person without arrest who the Police have reasonable and probable grounds to believe is contravening, or has contravened, any provisions of this Order, upon that person agreeing in writing to abide by this Order.
6. **THIS COURT ORDERS** that any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to this Order shall have authorization to release that person from arrest upon that person agreeing in writing to obey this Order;
7. **THIS COURT ORDERS** that, provided the terms of this Order are complied with, the Defendants and other persons remain at liberty to engage in a peaceful, lawful and safe protest.
8. **NOTICE OF THIS ORDER** may be given by: posting copies of this Order in or around downtown Ottawa; reading the Order to any person, including but not limited to reading the Order over an amplification system publishing this Order

online, including on social media accounts associated with the Defendants, and by distributing copies of this Order to media including CBC, Radio-Canada, CTV, Global News and all daily newspapers in the Ottawa-Gatineau area.

9. **THIS ORDER** shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.
10. **THIS COURT ORDERS** that the costs of this motion shall be in the cause.
11. **THIS COURT ORDERS** that the parties shall appear before the Court in Ottawa by videoconference on February 16, 2022 at 10:00am for the hearing of a motion to continue this Order.



This is **Exhibit “D”** referred to
in the Affidavit of **TRUDY MOORE**,
affirmed before me in the City of Ottawa,
in the Province of Ontario,
this 15th day of February, 2022.

A handwritten signature in black ink, appearing to be 'J. G.', written over a horizontal line.

A Commissioner for Taking Oaths, etc.

From: Champ Law - Convoy Class Action [REDACTED] a>
Sent: Thursday, February 10, 2022 10:46 AM
To: [REDACTED]
[REDACTED]
Subject: Champ Law - Convoy Class Action
Notice of Injunction and Claim
Attachments: CV-22-00088514-00CP - Order 02-07-2022 - Zexi Li v. Chris Barber et al. - Issued.pdf; Li v Barber et al (issued).pdf

Hello Mr King,

You are hereby given formal notice of the Order of Justice McLean dated February 7, 2022.

A copy of the Order is attached hereto, together with the Statement of Claim in the action in which you are a named defendant, Li v Barber et al, court file number CV-22-00088514-00CP.

If you would like further information regarding this matter, you may contact our firm at this email address.

Thank you,

CHAMP & ASSOCIATES | CHAMP & AVOCATS



This email is subject to legal privilege. If this message was not intended for you, please immediately delete and notify the sender. Thank you.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

- and -

Defendants/Responding Parties

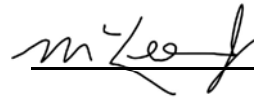
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Date of Issuance: 02/07/2022



Court File No:

Electronically issued
Délivré par voie électronique : 04-Feb-2022
Ottawa

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ZEXI LI

Plaintiff

- and -

**CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5,
JOHN DOE 6, JOHN DOE 7, JOHN DOE 8, JOHN DOE 9, JOHN DOE 10,
JOHN DOE 11, JOHN DOE 12, JOHN DOE 13, JOHN DOE 14, JOHN DOE 15,
JOHN DOE 16, JOHN DOE 17, JOHN DOE 18, JOHN DOE 19, JOHN DOE 20,
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JOHN DOE 51, JOHN DOE 52, JOHN DOE 53, JOHN DOE 54, JOHN DOE 55,
JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60**

Defendants

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office,

WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: _____

Issued by: _____

Registrar
Court House,
161 Elgin Street
Ottawa, Ontario

TO: Chris Barber
Swift Current, Saskatchewan

AND TO: Benjamin Dichter
Toronto, Ontario

AND TO: Tamara Lich
Medicine Hat, Alberta

AND TO: Patrick King
Red Deer, Alberta

AND TO: John Doe 1 to John Doe 60

CLAIM

1. The Plaintiff, on behalf of the Class described herein, claims the following:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff for the Class (as defined below);
 - (b) damages for private nuisance in the amount of \$4.8-million or any such amount that this Honourable Court deems appropriate;
 - (c) punitive damages in the amount of \$5-million;
 - (d) injunctive relief prohibiting the continuation of the nuisance;
 - (e) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, as amended;
 - (f) the costs of this action, including HST;
 - (g) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26 of the *Class Proceedings Act*, 1992, S O 1992, c. 6; and
 - (h) such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. Over the past two years, the COVID-19 pandemic has caused significant stress, severe illness, death and grief to every person in Canada. Over 33,000 Canadians have died from COVID-19 and thousands more suffer from its prolonged effects.
3. Governments at all levels across the country have adopted public health measures to prevent severe illness and death from COVID-19. These public health

measures have caused significant disruption to the lives of every Canadian. Despite this disruption, the vast majority of Canadians support public health measures, including vaccine mandates, because they believe these measures save lives.

4. A minority of Canadians are strongly opposed to these public health measures. The Defendants are among this minority. To express their political opposition to COVID-19 public health measures, the Defendants organized a “Freedom Convoy” of vehicles, including a large number of semi-trailer-tractor trucks, to travel from different parts of Canada and converge on the national capital of Ottawa.

5. The Defendants planned to organize a large demonstration in the vicinity of the Parliament Buildings in Ottawa. Like many protesters, they wanted their voices heard by political leaders. To ensure that happened, the Defendants designed a plan to block all the streets and roadways around Parliament and the surrounding neighbourhood, and make as much noise as possible and cause discomfort to the political leaders. To make that noise, the Defendants planned, organized, encouraged and directed “Freedom Convoy” participants to blast the horns on their vehicles, non-stop, for several hours.

6. As planned by the Defendants, the Freedom Convoy vehicles began to arrive in Ottawa in Ottawa on Friday, January 28, 2022. As planned by the Defendants, the Freedom Convoy protests formally launched on Saturday, January 29, 2022. Unlike most protests, the Freedom Convoy decided to stay and keep protesting, every day and night, until the Government of Canada met their demands of dropping all public health measures across Canada. The fact that public health measures are predominantly implemented by provincial governments has not deterred the Defendants. At the time this claim is issued, the protest remains ongoing.

7. A key tactic of the Freedom Convoy is blasting vehicle horns non-stop, all day. These horns include the air horns and train horns on the many semi-trucks. Air horns and train horns create an extremely loud noise as a warning. Air horns and train horns emit noise in the range of 100 to 150 decibels. These horns are not meant to be used

for longer than a few seconds because the sound levels are dangerous and cause permanent damage to the human ear. Despite these dangers, the Freedom Convoy trucks have been blasting these dangerous horns continuously for 12 to 16 hours per day.

8. The historical neighbourhood around the Parliament Buildings is home to approximately 24,000 residents. These residents are used to the inconvenience of large demonstrations and protests. Sometimes they even join in if they believe in the cause. These residents understand and respect the importance of democratic freedoms, including the freedoms of association, assembly and expression. But they have never experienced anything like the constant and excruciatingly loud horns of the Defendants' Freedom Convoy. For the approximately 6,000 residents who live closest to the protests, the non-stop blaring horns have caused unbearable torment in the sanctity of their own homes.

9. The Freedom Convoy horn protest organized by the Defendants has caused significant mental distress, suffering and torment to the Plaintiff and the proposed Class Members who live in the six-block radius around the main protest streets. The horn protest has substantially and unreasonably interfered with the private use and enjoyment of the Class Members' property.

PARTIES

10. The Plaintiff Zexi Li resides in Ottawa, Ontario, within five blocks of Parliament Hill. She is a 21-year-old public servant and graduate of the University of Ottawa.

11. The Defendant Chris Barber resides in Swift Current, Saskatchewan. He is one of the organizers of the Freedom Convoy. He is a truck driver, who owns a trucking company in Saskatchewan.

12. The Defendant Benjamin Dichter resides in Toronto, Ontario. He is one of the organizers of the Freedom Convoy. Dichter is a former Conservative Party of Canada candidate and a prominent supporter of the People's Party of Canada.

13. The Defendant Tamara Lich resides in Medicine Hat, Alberta. She is one of the organizers of the Freedom Convoy and frequently acts as a spokesperson on social media accounts associated with the Freedom Convoy. She is listed as the organizer of the Freedom Convoy's fundraiser on the crowdsourced fundraising platform GoFundMe. Lich is the Secretary for the Maverick Party, a western separatist group formerly known as Wexit Canada, and was also an organizer for the Yellow Vests Canada movement.

14. The Defendant Patrick King resides in Red Deer, Alberta. He is one of the organizers of the Freedom Convoy. King was a co-founder of Wexit Canada and an organizer for the Yellow Vest Canada movement.

15. John Does 1 to 60 are drivers of semi-trucks that are parked in the downtown Ottawa core during the Freedom Convoy protest, blasting air horns and train horns on their trucks as a form of protest. The identities of these truck drivers are unknown at the time of the issuance of the claim.

16. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on her own behalf and on behalf of all other persons who reside within two blocks of the main protest streets.

17. The proposed members of the Class are:

all persons who reside in Ottawa, Ontario, from Bay Street to Elgin Street and Lisgar Street to Wellington Street.

ORGANIZING THE FREEDOM CONVOY PROTEST

18. In early January 2022, the Defendants began to organize a protest to express their political opposition to COVID-19 health measures. They discussed and created a common plan to have a “Freedom Convoy” of vehicles, including a large number of semi-trailer-tractor trucks, travel from different parts of Canada and converge in the national capital of Ottawa on January 29, 2022.

19. On or around January 14, 2022, the Defendants created a Facebook page called “Freedom Convoy 2022” which they described as a “meeting place to discuss logistics, organization and mobilization to restore our Freedoms”. Indeed, the Defendants used this Facebook page to discuss logistics, organization and mobilization for the Freedom Convoy.

20. On or around January 23, 2022, the Defendants also created a fundraising page for the Freedom Convoy on the crowdsourced fundraising website GoFundMe. The Defendant Lich is listed as the organizer of this GoFundMe page, and the Defendant Dichter is listed as a Team Member.

21. On their GoFundMe page, the Defendants discussed the logistics and organization for the Freedom Convoy and solicited donations from supporters to assist them with their common plan to travel to and occupy Canada’s capital.

22. The Defendants discussed the common goals that they hoped to achieve by organizing the Freedom Convoy, which included forcing Prime Minister Justin Trudeau and the federal government to announce a repeal of all public health measures.

23. The Defendants discussed and coordinated plans for how they would occupy Ottawa and how they would attempt to reach their common goals. They discussed setting up a command room or war room to further strategize once they reached Ottawa.

24. One of the main tactics coordinated by the Defendants, in support of their goal of forcing the federal government to listen to their demands, was for participants to make as much noise as possible when stationed in Ottawa's downtown. To make that noise, the Defendants planned, organized, encouraged and directed Freedom Convoy participants to continuously blast the horns of their vehicles, as described further below.

SETTING UP IN OTTAWA AND MAIN PROTEST STREETS

25. Starting on or around Friday, January 28, 2022, Freedom Convoy vehicles started to arrive in Ottawa. These vehicles included tractor trailers, tractors with no trailers, passenger vehicles, and large recreational vehicles ("RVs").

26. When they arrived in Ottawa, the Freedom Convoy vehicles began to congregate to block many of the streets surrounding Parliament Hill and in the Centretown neighbourhood.

27. Several hundred vehicles have remained camped out in Ottawa's downtown since January 28, 2022, lined up bumper-to-bumper. The clusters of vehicles are predominantly concentrated on the streets between Bay Street to Elgin Street and Laurier Avenue to Wellington Street.

28. For 24 hours per day, the semi-trucks have primarily remained lined and concentrated on Kent Street and Bank Street running north south, and on Wellington Street running east west. The trucks remain running all day and night, with other Freedom Convoy participants organizing the delivery of fuel in jerry cans.

HORN TACTIC

29. One of the main protest tactics employed by Freedom Convoy participants has been to make as much noise as possible to disturb individuals in Ottawa's downtown.

30. To make that noise, the Defendants planned, organized, encouraged and directed Freedom Convoy participants to blast the horns on their vehicles, non-stop, for several hours.

31. The Defendants coordinated their horn-blasting tactic with Freedom Convoy participants via social media channels, including Facebook and YouTube, and via the walkie-talkie app Zello.

32. As one example of this, on January 31, 2022, the Defendant King posted a YouTube video instructing all Freedom Convoy “truckers” to collectively honk for ten minutes straight every hour and half hour.

33. Initially, this honking would last from approximately 7AM to 1AM. On or around February 1, 2022, a new timeframe was coordinated for the honking, which now occurs from approximately 8AM to 11PM.

34. The Defendants have taken to social media and Zello to celebrate the honking and to encourage participants to continue employing this tactic.

35. The types of horns that have been employed as part of the horn-blasting tactic include air horns, which are only to be used for safety warnings, and train horns.

36. Operator manuals for the types of horns being used by the Freedom Convoy provide warnings that they produce “extreme loudness” and can cause permanent hearing damage.

DEFENDANTS’ CONDUCT IS UNLAWFUL

37. The Plaintiffs plead that the Defendants’ ongoing and concerted horn-blasting tactic is unlawful.

38. The Defendants’ conduct is clearly prohibited by sections 2, 3 and 15 of the City of Ottawa Noise By-Law, By-Law No. 2017-255.

39. Section 2 of By-Law No. 2017-255 states that no person shall cause or permit any bass noise, unusual noise or noise likely to disturb the inhabitants of the City.

40. Section 3 of By-Law No. 2017-255 states that no person shall cause or permit the ringing of any bell, sounding of any horn, or shouting in a manner likely to disturb the inhabitants of the City.

41. Section 15 of By-Law No. 2017-255 states that no person shall cause or permit unnecessary motor vehicle noise such as the sounding of the horn, revving of engine and the squealing of tires of any motor vehicle on any property other than a highway.

42. The level of noise emitted by the Defendants also exceeds the noise levels that would be permitted in a workplace setting, contrary to the Federal Occupational Health and Safety Regulations, SOR/86-304 enacted pursuant to the *Canada Labour Code*, RSC, 1985 c. L-2 and contrary to the Ontario Noise Regulation 381/15 enacted pursuant to the *Occupational Health and Safety Act*, RSO 1990, c 01.

43. The Defendants' horn-blasting also constitutes conduct that violates the *Criminal Code of Canada*, RSC 1985, c C-46 pursuant to sections 430(1)(d) (Mischief), 175(1)(d) (Cause Disturbance), and 180(1)(s) (Common Nuisance).

44. Finally, exposure to loud noise for a prolonged period of time and sleep deprivation are both techniques that have been found to constitute torture, and are considered to be cruel, inhumane and degrading treatment under international law.

IMPACT

45. When walking within 50 feet of the semi-trucks blasting their air horns, the sound pressure decibel level is between 100 and 105 constantly. When the train horns on the semis are blasted, the decibel level increases to 120 to 125.

46. For individuals who live in residences beside the streets where the horns are blasting, the sound within the home is approximately 80 decibels.

47. The normal sound in a home is 35 to 40 decibels. A normal conversation is 55 to 65 decibels. A lawn mower can be 88 to 94 decibels.

48. Sleep is best at 30 decibels or below and there can be significant interference with sleep when sound level decibels exceed 45.

49. Each 10 decibel increase in sound level equates to a doubling of the sound in the listener's perception. An increase of 20 decibels is a fourfold increase.

50. Hearing damage can occur at 90 decibel sound pressure level where the exposure is over 30 minutes. At 100 decibels, sound pressure can cause hearing damage in about 15 minutes; at 120 decibel sound pressure hearing damage can occur in a matter of seconds.

51. Prolonged exposure to sound levels of 70 decibels and above can cause psychological distress and interfere with psychological integrity.

52. The truck horns are causing moral and psychological harm to the Class Members. The horns are substantially interfering with the private use and enjoyment of their homes. With horns ending as late as 1am, and no earlier than 11pm, Class Members are experiencing significant sleep disturbances.

53. Class Members who leave their homes for work, groceries or necessities experience significantly elevated sound exposure. Some Class Members are avoiding going out as much as possible and are prisoners in their own homes. Others have been forced to leave their homes and find alternate accommodation. The Class Members are living in daily torment caused by the incessant blasting of truck horns.

PLAINTIFF'S PERSONAL EXPERIENCE

54. The Plaintiff, a resident of the Centretown neighbourhood in the heart of downtown Ottawa, has suffered mental distress, suffering and torment as a result of

the persistent and loud honking from several large trucks which have been camped outside of her residence since Friday, January 28, 2022.

55. While some of the honking sounds are from regular sized motor vehicle horns, the loudest and most persistent honks have come from large transport trucks. Some of these trucks are equipped with horns emit loud honking noises typical of vehicles of their size. A number of the trucks are equipped with horns which are similar in tone and volume to train horns.

56. From within her unit, the sound of all three types of honking horns from the persists at regular and frequent intervals from morning to night, sometimes as late as 1:30 am. With the exception of some short periods of reprieve late in the night, the sound feels to the Plaintiff as if it is nearly constant. The honking of the horns is frequently accompanied by loud music, sounds of shouting and fireworks. The combination of these sounds makes the Plaintiff feel as though she is living in a war zone.

57. The honking horns, in particular, have interfered with the sense of peace, safety and serenity which the Plaintiff previously enjoyed in her home. During the brief periods when the sound of honking horns subsides, the Plaintiff is unable to enjoy the relative quiet because she becomes riddled with anxious anticipation for the moment it will start up again. The Plaintiff has found this anxious anticipation almost as unbearable as the sounds of the horns themselves.

58. The Plaintiff has been unable to enjoy a restful night's sleep since the Freedom Convoy arrived in her neighbourhood. The only way the Plaintiff can fall asleep and temporarily escape the noise is by playing music on external speakers at 70-80% volume and then inserting noise-cancelling earphones or earplugs into her ears.

59. The Plaintiff is fearful every time she ventures outside. She does not leave her residence without first inserting noise-cancelling headphones into her ears. Even with these devices in her ears, the Plaintiff can still hear the sounds of the honking horns

very clearly. The sound is so loud that she can physically feel vibrations inside her ears.

60. When the Plaintiff ventures outside, she is almost immediately subjected to heckling by members of the Freedom Convoy, yelling at her to remove the mask she wears to protect herself and others from contracting COVID-19. When she ignores the heckles, members of the Convoy respond by honking their horns which invariably causes the Plaintiff to flinch. When the Plaintiff flinches, the hecklers cheer loudly.

61. Since Friday January 28, 2022, the Plaintiff has contacted the Ottawa Police Service on at least 14 occasions to complain about the noise and the distress it is causing her. In response to her calls, she has either been told that there's nothing that can be done or that there are officers on the ground who will address the issue, but no one ever comes and the noise continues unabated. The sense that police are impotent to enforce law and order has contributed to the Plaintiff's fear and anxiety which are further exacerbated by the intolerable levels of noise.

62. The Plaintiff loves her community and is heartbroken by the trauma that is being inflicted on her and her neighbours.

PRIVATE NUISANCE

63. The incessant blaring of the high decibel air horns and train horns substantially interferes with the private use and enjoyment of the Class Members' homes. The conduct is totally unreasonable and unjustified.

64. The Defendants Barber, Dichter, Lich and King have organized, planned, encouraged and directed the horn tactic by Defendants John Doe 1 to John Doe 60.

DAMAGES SUFFERED BY CLASS MEMBERS

65. As a consequence of the private nuisance by the Defendants, Class Members suffered injury and damages including:

- (a) emotional and mental distress;
- (b) difficulty concentrating;
- (c) interference with quiet enjoyment of home;
- (d) headaches; and
- (e) difficulty sleeping.

66. The estimated damages per Class Member is \$100 per day of the continued use of the unlawful horn tactic.

67. Some Class Members have incurred special damages for the cost of alternate accommodations and ear plugs, in an amount to be specified at a future date.

PUNITIVE DAMAGES

68. The Defendants deliberately planned the horn tactic to cause distress and discomfort to the Class Members and substantially interfere with the private enjoyment of their homes. The Defendants are aware or ought to be aware that the prolonged use of the extremely loud air horns and train horns can cause permanent hearing damage and psychological harm. The Defendants have acted with wanton disregard towards the residents of Ottawa.

69. This high-handed and callous conduct of the Defendants warrants the condemnation of this Honourable Court. Canada is a free and democratic society with a long tradition of peaceful protest and assemblies. The Defendants have abused those freedoms to cause serious harm to others, innocent bystanders to the Defendants' pursuit of their misguided political goals.

70. The Plaintiff proposes that this action be tried at the City of Ottawa, Ontario.

Dated this 4th day of February, 2022.

CHAMP & ASSOCIATES
Barristers and Solicitors

Per: Paul Champ

LSO: [REDACTED]

Tel: ([REDACTED])
[REDACTED]

[REDACTED]

		Court File No.
ZEXI LI	-and -	CHRIS BARBER, BENJAMIN DICTER, TAMARA LICH, PATRICK KING and JOHN DOES 1-60
Plaintiff		Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

STATEMENT OF CLAIM

Proceedings under the *Class Proceedings Act*,
1992

CHAMP & ASSOCIATES
Equity Chambers

Tel.: (

Per: Paul Champ
LSUC#:

Solicitors for the Plaintiff

This is **Exhibit “E”** referred to
in the Affidavit of **TRUDY MOORE**,
affirmed before me in the City of Ottawa,
in the Province of Ontario,
this 15th day of February, 2022.



A Commissioner for Taking Oaths, etc.



5:09 PM

100% fake



4:08 PM

Yup, it works!



Environ Biol Fish (2015) 98:1899–1914

DEVELOP
SUPPORT COURSE

THESE DOCUMENTS ARE NOT TO BE REPRODUCED

1. 1990年，中国人口为11.34亿，其中城镇人口为3.14亿，农村人口为8.20亿。

Figure 10.10

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12/15/2011 11:28:00 AM

1000

THE AUTHOR is a faculty member in the Department of Psychology at the University of Illinois at Chicago, Chicago, Illinois. He is also a past president of the American Psychological Association and a past president of the American Psychological Society.

© 1995 by John Wiley & Sons, Inc.

YOU

5:06 PM

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section 101 of the Courts of Justice Act, Rule 40.01 of the Rules of Civil Procedure, and section 12 of the Class Proceedings Act.

7. **THIS COURT ORDERS** that any persons having notice of this Order are hereby restrained and enjoined from using air horns or train horns, other than those on a motor vehicle of a municipal fire department, in the geographic location anywhere in the City of Ottawa, in the vicinity of downtown Ottawa, being any streets north of Highway 417, otherwise known as the Queensway, for 10 days from the date of this Order.
8. **THIS COURT ORDERS** that the Defendants Barber, Dichter and Lich forthwith direct that they communicate this Order through their social media and other channels to all persons they know who are or who have been participating in the Freedom Convoy Protest in Ottawa, Ontario, from January 28, 2022, to the present day;
9. **THIS COURT ORDERS** that any police officer with the Ottawa Police Service, and/or the appropriate police authority in the jurisdiction in question (the "Police"), shall have authorization to arrest and remove any person who has knowledge of this Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order.
10. **THIS COURT ORDERS** that the Police shall retain discretion:
 - a. as to the timing and manner of enforcement of this Order, and specifically retain discretion as to the timing and manner of arrest and removal of any person pursuant to this Order; and
 - b. to detain and release any person without arrest who the Police have reasonable and probable grounds to believe is contravening, or has contravened, any provisions of this Order, upon that person agreeing in writing to abide by this Order.
11. **THIS COURT ORDERS** that any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to this Order shall have authorization to release that person from arrest upon that person agreeing in writing to obey this Order;
12. **THIS COURT ORDERS** that, provided the terms of this Order are complied with, the Defendants and other persons remain at liberty to engage in a peaceful, lawful and safe protest.
13. **NOTICE OF THIS ORDER** may be given by: posting copies of this Order in or around downtown Ottawa; reading the Order to any person, including but not limited to reading the Order over an amplification system published this Order.



File

Text (306) 421-2455...

History

Voicemail

Lines

SMS



(306) 421-2455



(306) 421-2455

5:09 PM

100% fake



(587) 216-2653

4:08 PM

Yup, it works!

You

5:06 PM

3

online, including on social media accounts associated with the Defendants, and by distributing copies of this Order to media including CBC, Radio-Canada, CTV, Global News and all daily newspapers in the Ottawa-Gatineau area.

9. **THIS ORDER** shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.

10. **THIS COURT ORDERS** that the costs of this motion shall be in the cause.

11. **THIS COURT ORDERS** that the parties shall appear before the Court in Ottawa by videoconference on February 16, 2022 at 10:00am for the hearing of a motion to continue this Order.

Date of Issuance: 02/07/2022

(306) 421-2455

5:07 PM

This isn't how you serve documents

You

5:07 PM

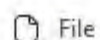
All that is required is notice, not service

(306) 421-2455

5:08 PM

This is a lie

100% fake



File

Text (306) 421-2455...



This is **Exhibit “F”** referred to
in the Affidavit of **TRUDY MOORE**,
affirmed before me in the City of Ottawa,
in the Province of Ontario,
this 15th day of February, 2022.



A Commissioner for Taking Oaths, etc.



Paul Champ

Our File: 2476

February 13, 2022

BY EMAIL

Keith Wilson
Wilson Law Office
Suite 195, 3-11 Bellrose Drive
St. Albert, AB T8N 5C9

Dear Mr Wilson:

Re: Zexi Li v Chris Barber et al - CFN: CV-22-00088514-00CP

I am sure you are aware that many individuals have blasted their truck horns in downtown Ottawa at different times over the last few days in contravention of the Court Order issued February 7, 2022.

Further to paragraph 3 of the Order, your clients were directed to communicate the Order and its prohibition on the use of truck horns on their social media and other channels. Can you please confirm how and when Mr Barber, Mr Dichter and Ms Lich communicated this order? I would like confirmation by tomorrow, Monday, February 14, 2022, at 12:00pm EST.

In addition, you have not responded to my request to agree upon some terms for the use of amplification systems in downtown Ottawa. You indicated on February 9, 2022 by email that you were reviewing. As you may be aware, sound systems have been set up at several locations, blasting loud music at all hours, with particular intensity over the last two days. We are amenable to some terms that would not totally prohibit the use of sound systems. Your position would be appreciated.

Yours truly,

A handwritten signature in black ink, appearing to read 'Paul Champ', with a stylized flourish at the end.

Paul Champ

This is **Exhibit “G”** referred to
in the Affidavit of **TRUDY MOORE**,
affirmed before me in the City of Ottawa,
in the Province of Ontario,
this 15th day of February, 2022.



A Commissioner for Taking Oaths, etc.



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued: 02/15/2022
Délivré par voie électronique
Ottawa

THE HONOURABLE ASSOCIATE CHIEF)
JUSTICE FAYE MCWATT)
)

MONDAY, THE 14TH

DAY OF FEBRUARY, 2022

B E T W E E N:

CITY OF OTTAWA

Applicant

– and –

PERSONS UNKNOWN

Respondents

– and –

ATTORNEY GENERAL OF ONTARIO and
ATTORNEY GENERAL OF CANADA

Intervenors

ORDER

THIS APPLICATION, made by the City of Ottawa was heard this day at the Court House,
161 Elgin Street, Ottawa, Ontario.

ON HEARING the submissions of the applicant, and reading the materials filed, and having
regard to the urgency of the situation,

1. **THIS COURT ORDERS** that an interlocutory injunction is granted, pursuant to section 440 of the *Municipal Act*,
2. **THIS COURT ORDERS** that any persons having notice of this Order are hereby restrained and enjoined from directly or indirectly, by any means whatsoever:
 - a. Breaching the following By-laws of the City of Ottawa: Open Air Fire By-law 2004-163, Fireworks By-law 2003-237, Noise By-law 2017-255, Use and Care of Roads By-law 2003-498, and the Idling Control By-law 2007-266, in particular:
 - i. With respect to Open Air Fire By-law 2004-163:
 1. They shall not set or maintain an open air fire without first having obtained the necessary permit from the Fire Chief;
 - ii. With respect to Fireworks By-law 2003-237:
 1. They shall not discharge any firecrackers or any fireworks.
 - iii. With respect to Noise By-law 2017-255:
 1. They shall not cause any noise likely to disturb the inhabitants of the City, including but not limited to, causing noise by honking air horns, car horns, train horns, in real-time or playing pre-recorded horns
 - iv. With respect to Use and Care of Roads By-law 2003-498:
 1. They shall not encumber or damage a highway by any means, including but not limited to, encumbering or damaging the highway with tents, structures, or appliances;
 2. They shall not set or carry fire on a highway; and
 3. They shall not throw, pile, store or cause any material to be thrown or piled upon a highway except for the purpose of having it immediately delivered upon adjacent premises.
 - v. Idling Control By-law 2007-266 and in particular:

1. They shall not cause or permit a vehicle to idle for more than three (3) consecutive minutes in a sixty (60) minute period, unless:
 - a. it is an occupied vehicle, within the demonstration zone as described in Appendix A to this order, and the temperature outside is less than negative fifteen (15) degrees Celsius including the windchill value as determined by the Environment Canada temperature readings; or
 - b. it is an occupied vehicle, outside the demonstration zone as described in Appendix A to this order, and the temperature outside the vehicle is less than five degrees Celsius including the windchill value as determined by the Environment Canada temperature readings.
 - b. physically preventing, impeding, restricting or in any way physically interfering with, or counselling others to impede, restrict or in any way physically interfere with, another person's compliance with this order;
 - c. threatening, harassing or intimidating the applicant's employees, servants, agents or other persons engaged in the administration or enforcement of municipal by-laws; and
 - d. physically interfering with or counselling others to physically interfere with the performance by the applicant of its obligations under the *Municipal Act, 2001* and its contractual relationships with its employees, servants, agents or other persons having business with the applicant.
3. **THIS COURT ORDERS** that the respondents and each of them, and any and all persons having knowledge of this Order, forthwith remedy any contraventions of the By-laws as set out in subsection 2(a) of this Order, and;
4. **THIS COURT ORDERS** that this order be directed to the Sheriff of the County of Ottawa for enforcement and directs the Ottawa Police Service, and any Police Service assisting the Ottawa Police Service, to assist the Sheriff in the enforcement of the order by removing from the subject property any person contravening its provisions, and/or removing any objects being used in

contravention of bylaws, subject to the discretion of the police, and any Police Service assisting the Ottawa Police Service, with respect to the timing and means of enforcement.

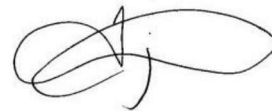
5. **THIS COURT ORDERS** that the terms of this Order shall remain in force until varied or discharged by a further Order of the Court.

6. **THIS COURT ORDERS** that, provided the terms of this Order are complied with, the Respondents and other persons remain at liberty to engage in a peaceful, lawful and safe protest.

7. **THIS ORDER** shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.

8. **NOTICE OF THIS ORDER** may be given by: posting copies of this Order in or around downtown Ottawa; reading the Order to any person, including but not limited to reading the Order over an amplification system, and publishing this Order online.

9. **THIS COURT ORDERS** that the terms of this Order bind the respondents and every other person or legal entity who is subject to this Order and is given notice of the Order, as of the time such respondents, person or legal entity first receives notice of the Order, and whether or not such respondents, person or legal entity has been served with a copy of the Order.



McWatt A.C.J.S.C.J.

"Electronically Issued; February 15, 2022"

THE CITY OF OTTAWA
Applicant

-and- PERSONS UNKNOWN
Respondents

Court File No. CV-22-88569

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

ORDER

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Kevin P. Nearing LSO # 25476J
E: knearing@blg.com
T: 613.787.3520 direct
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Michelle Doody LSO # 66612L
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T: 613.787.3510 direct
T: 613.237.5160 main
F: 613.230.8842

Lawyers for the Applicant

This is **Exhibit “H”** referred to
in the Affidavit of **TRUDY MOORE**,
affirmed before me in the City of Ottawa,
in the Province of Ontario,
this 15th day of February, 2022.



A Commissioner for Taking Oaths, etc.



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Adrian Harewood

@CBCAdrianH

Day 18 of the [#trucker](#) occupation: Tonight on Wellington St. in downtown [#Ottawa](#) across from Parliament Hill. Despite the injunction the blaring of horns continues.



0:31

3,402 views

10:29 PM · Feb 14, 2022 · Twitter for iPhone

29 Retweets

10 Quote Tweets

62 Likes

💬

↻

❤️

🔼

Tweet your reply

Reply

Lynn @RadicalSister15 · 13h

...

Replying to @CBCAdrianH

And gee no ticketing despite 2 court injunctions, but I'll give OPS a pass tonight given today's news. I'm sure the threat level has gone up.

💬 3

↻

❤️

🔼

Quigg @cooke_millard · 9h

...

Replying to @CBCAdrianH and @MissHelveticaB

Is that someone attempting to do an Indigenous-style dance in the middle of that square..? Ik they've been appropriating culture but Jesus Christ...

💬 1

↻

❤️

🔼

Kevin Gray @KevinGr41485878 · 13h

...

Replying to @CBCAdrianH

Wow. This is just a short taste of what it's like downtown. My heart goes out to the residents near this location. I can't imagine. Didn't they win? Ford announced the plan for every now? Victory Celebration? Go home.

🔍

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Relevant people

Adrian Harewood

@CBCAdrianH

News Anchor - @CIB6. Host of Our Ottawa current affairs mag; Professor @JSchool @CABJMedia, @CA

What's happening

News · Yesterday

PM Trudeau invokes Emerg Act in response to ongoing protests

Trending with [Emergencies Act](#), [Measures Act](#)

#KFCScorcher

Finger Lickers Beware

 Promoted by KFC Canada

Trending in Canada

#RamRanchResistance

2,191 Tweets

Trending in Canada

#BattleOfBillingsBridge

1,732 Tweets

World news · LIVE

Ukraine: Russia says it is withdrawing some troops from the Ukraine border

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Tweet

Julie S. Lalonde Retweeted

Peggy Blair

@peggy_blair

Two court injunctions in place along with a state of emergency and truck horns are still blaring on Wellington without any enforcement from the police or their OPP and RCMP reinforcements.

10:50 PM · Feb 14, 2022 · Twitter Web App

396 Retweets

25 Quote Tweets

1,415 Likes

Tweet your reply

Reply

conservatives suck @LloydWasser · 12h

Replying to @peggy_blair

Justin needs to remove the Ottawa Police and the OPP from the city they've been compromised. Bring in the military and quash this thing once and for all. Organizers cuffed and charged trucks seized and auctioned off, other vehicles towed and impounded, kids rescued

3

1

34

Show replies

Stephen John Ford @1mohawklawyer · 3h

Replying to @peggy_blair

White extremism, apparently, is now kosher with Canadian law enforcement

8

8

36

Nicolas Robidoux @NicolasRobidoux · 3h

What do you mean, "now"? #TruckersConvoy

1

1

13

Dusty - boosted and turbocharged @thirdmanogie · 11h

Replying to @peggy_blair and @JulieSLalonde

How one of these truckers hasn't been pulled from their trucks and Reg Denny'd is beyond me. Congrats, Ottawa, for all being collectively better people than I am. I don't know if I could have remained sane this long.

8

1

19

Dusty - boosted and turbocharged @thirdmanogie · 2h

FYI, I am advocating non-violence in spite of what our natural reactions to assault may be. This is meant to congratulate the good people of Ottawa on their restraint and professionalism. For the bouncy castle insurrectionists, go home and stop infringing on the rights of others.

1

1

Trying to survive in Doug Fords Ontario @JasonBF73 · 3h

Replying to @peggy_blair

It's not as easy as just walking in and arresting them. I believe some of these people will not leave without a fight. With the seizure of weapons at Courtts we can be sure that there are the same within Ottawa.

7

18

Vanessa Williams @fridgebuzz · 2h

That's what they said about Windsor. "People are..."

Search Twitter

Relevant people

Peggy Blair

@peggy_blair

Ottawa realtor, non mystery author, ren animal lover, boxer, Indigenous law.

What's happening

News · Yesterday

PM Trudeau invokes Emerg Act in response to ongoing protests

Trending with [Emergencies Act](#), [Measures Act](#)

#KFCScorcher

Finger Lickers Beware

 Promoted by KFC Canada

Gaming · Trending

#Wordle241

People try to guess today's f six tries or fewer in brainteas 5,709 Tweets

Trending in Canada

#BattleOfBillingsBridge

1,736 Tweets

World news · LIVE

Ukraine: Russia says it is withdrawing some troops f the Ukraine border

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https://twitter.com/peggy_blair/status/1493432406224904197

Court File No. CV-22-00088514-00CP

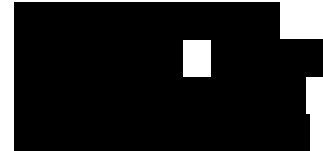
ZEXI LI

- and -

CHRIS BARBER, BENJAMIN
DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOES 1-60

Plaintiff (Moving Party)

Defendants (Responding Parties)

ONTARIO
SUPERIOR COURT OF JUSTICE**AFFIDAVIT OF TRUDY MOORE**
(Sworn February 15, 2022)**CHAMP & ASSOCIATES**
Equity ChambersPer: Paul Champ
LSUC#: [REDACTED]**Solicitors for the Plaintiff**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ZEXI LI

Plaintiff/Moving Party

- and -

**CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5,
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JOHN DOE 51, JOHN DOE 52, JOHN DOE 53, JOHN DOE 54, JOHN DOE 55,
JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60**

Defendants/Responding Parties

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF JEREMY KING
Affirmed February 15, 2022**

I, JEREMY KING, of the Town of Newmarket in the Province of Ontario, AFFIRM:

1. I am the Executive Vice President of King International Advisory Group (“KIAG”), retained on behalf of the Plaintiff in this matter to collect evidence concerning certain of the named individual defendants and proposed defendants in

this action, and to track social media relating to the Ottawa “Freedom Convoy” protest and its organization and activities. I have been primarily responsible for this investigation, and directed the work of others at KIAG in this regard. As such, I have personal knowledge of the matters contained in this Affidavit. Where I have made statements based on information and belief, I have stated the source of the information and believe it to be true.

2. I am aware that, on February 7, 2022, a Judge of the Ontario Superior Court of Justice granted an Order for an injunction (the “Injunction Order”), prohibiting the use of air horns and train horns in downtown Ottawa for a period of 10 days. I have seen and reviewed a copy of this Order.

3. During my investigation, I have reviewed statements and information from the Defendants Barber, Dichter, Lich, and King as well as other members of the Freedom Convoy protest on the following social media platforms: Zello; Twitter; Facebook; Instagram; Telegram; Discord; Reddit; TikTok; BitChute; Rumble; and Dave Rubin’s Report. Organizers of the Freedom Convoy, including the named Defendants, also host regular “press conferences” streamed via video and made available via Facebook Live and YouTube.

4. During the course of my investigation, I have not seen any posts or statements by the Defendants Dichter, Lich, or Barber communicating the Injunction Order to Convoy participants. I note the following with respect to the named Defendants:

Benjamin Dichter

5. I reviewed statements and information from the Defendant Dichter’s known social media profiles, which include Twitter account @BJDichter and Instagram account @bjdichterxo. I did not see any posts or statements on this account communicating the Injunction Order to Freedom Convoy participants.

Tamara Lich

6. I reviewed statements and information from the Defendant Lich's known social media profiles, which include Twitter account @Tamara_MVC and TikTok account tamaralich. I did not see any posts or statements on these accounts communicating the Injunction Order to Freedom Convoy participants.

7. I did, however, see a post on the Freedom Convoy 2022 public Facebook page made on February 12, 2022 at 2:27PM by the Defendant Lich stating "We have the support of a Superior Court judge who has stated numerous times that we have a legal right to be here and to protest peacefully, and peaceful we shall remain". Lich makes no mention in this post of the fact or terms of the Injunction Order. Attached hereto and marked as **Exhibit "A"** is a copy of Lich's Facebook post dated February 12, 2022.

Chris Barber

8. I reviewed statements and information from the Defendant Barber's known social media profiles, which include TikTok accounts bigred19755 and chrisbarber1691 and Facebook account Christopher.barber.94009. I did not see any posts or statements on these accounts communicating the Injunction Order to Freedom Convoy participants, but saw one post that does refer to the Injunction Order. On February 9, 2022, Mr Barber posted himself on TikTok "live from Ottawa", stating there is "an order in place to keep the horns down". He then advises viewers that if they see a "large mass of police" approaching their trucks, they should:

...lock that door, crawl into that bunk but before you do that **grab that horn switch and don't let go. Let that fucking horn go no matter what time it is and let it roll as long as possible, until they're busting your fucking windows down.** We want everybody to know when the time comes, and that's the way to do it. When that happens, do that guys please. Let that horn go and don't let it go when we see that mass force of police coming at you. [...] We'll see if we can fire some shit up.

Mr Barber's TikTok video posted February 9, 2022 can be accessed online at the following link:

https://www.tiktok.com/@bigred19755/video/7062842855907200262?is_copy_url=1&is_from_webapp=v1.

Patrick King

9. I also reviewed statements and information from the Defendant King's known social media profiles, which include Facebook account The Real Pat King and Instagram account @real_patrick_king.

10. I saw on Mr King's public Facebook page, "The Real Pat King", a Facebook Live video initially broadcast on February 7, 2022 starting at 3:03PM, and which can be accessed online using the link: <https://fb.watch/b1dCQTIMAI/>. The words "BREAK BREAK BREAK" appear under the video on the Facebook page. Starting around 10 seconds into this video, the Defendant King states he wants all truckers' attention and tells them to "break break break". He then makes the following statements throughout the video:

- (a) at approximately 0:28, he states he has a message that needs to go out to "every trucker, everybody on the Convoy" and that everybody needs to be "dead silent on the horns";
- (b) at approximately 0:54, he states that a Judge has issued an injunction against the horns for 10 days, and repeats that there needs to be "silence on the horns";
- (c) at approximately 1:10, he states, "This is their grounds to arrest you and pull you out of your trucks";
- (d) at approximately 2:50, he states, "For the next ten days, you cannot blast your horns. I understand it's hard, we love them, we absolutely love them, but no more horns";
- (e) at approximately 3:55, he states, while laughing, "Remember, these people haven't been able to sleep for 10 days. Okay, it's kind of funny. I'm not going to laugh. I'm not going to lie, it's pretty hilarious";
- (f) at approximately 4:07, he states, "So now, you've got the citizens of Ottawa requesting the municipality of Ottawa to put in an injunction to stop the horns, and now they put an injunction in there. And now they're

asking for the Feds to come and negotiate and get us out of their city. It's working, it's working beautiful. It's awesome guys. I'm not laughing, you're laughing. It's kind of funny, it's kind of funny how we can hug and laugh and have a good time, and things are working. Ladies and gentlemen, from the bottom of my heart, great job out there. You're doing fantastic, let's keep up that great work. Let's keep up that enthusiasm";

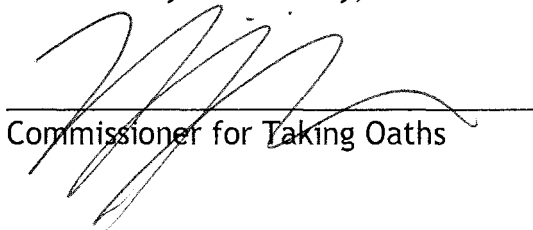
(g) at approximately 5:00, he repeats to "stop on the horns" and that "the injunction's been put in for 10 days".

11. I also saw on Mr King's public Facebook page, "The Real Pat King", a subsequent Facebook Live video initially broadcast on February 8, 2022 starting at 9:39AM, and which can be accessed online using the link: <https://www.facebook.com/therealpatking/videos/653197749066349/>. Starting around 7 minutes and 16 seconds into this video, the Defendant King says: "I don't give a shit anymore. It's game on boys. Blow those horns. Let them go. Let them fire as loud as you can. I don't give a shit anymore."

12. I have not seen any other posts or statements on these or other accounts which I know to be associated with the Defendants Barber, Dichter, Lich, King, or other Freedom Convoy organizers communicating the Injunction Order to Freedom Convoy participants.

13. I make this affidavit in support of the plaintiff's motion for injunctive relief and for no improper purpose.

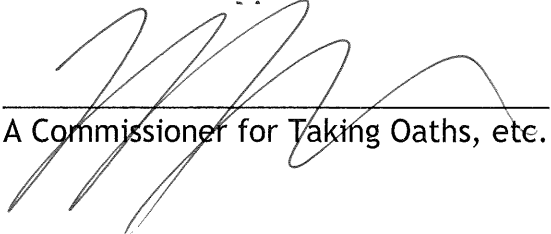
AFFIRMED BEFORE ME REMOTELY)
in accordance with O. Reg. 431/20)
by videoconference between)
Newmarket, ON (affiant) and)
Ottawa, ON (commissioner))
this 15th day of February, 2022.)


Commissioner for Taking Oaths



JEREMY KING

This is **Exhibit "A"** referred to
in the Affidavit of **JEREMY KING**,
affirmed before me
this 15th day of February, 2022.



A Commissioner for Taking Oaths, etc.



Freedom Convoy 2022
Yesterday at 2:27 PM · 🌐

Hi my fellow freedom loving Canadians! I have been able to finally get a new FB account set up but the powers that be still won't let me access it from my cell phone. I am going to get some videos made to get posted here on our main page as I can't do lives from my cell 🙄

As a quick update, it has been a very hectic few weeks but I am happy to say we are winning! Canadians have come together like I have never witnessed in my lifetime. HOPE and PRIDE are now the two words I hear the most. Everywhere I go people are hugging and smiling and flying their Canadian flags with pride. People break out into Oh Canada on a regular basis and everywhere you go there are always shouts of FREEDOM. People are dancing in the streets and the atmosphere of joy is everywhere.

We are waiting on a ride to take us out to visit the truckers out at 'the farm'. We are all one big family now and it moves me to tears daily. We have had our struggles, they have seized all of the money but still we persevere. Canadians are generously donating so much more than just money. I have faith the monetary donations will be recovered and we have great people working around the clock on this. We have the support of a Superior Court judge who has stated numerous times that we have a legal right to be here and to protest peacefully, and peaceful we shall remain.

I cannot express my love and gratitude enough. Hold your heads high and know that we have Truth, Justice and Freedom on our side (and I am more than certain some Divine Intervention) Canada, we got this. ❤️

Sincerely,
Tamara



15K

1.3K Comments · 1K Shares

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Canadian Loggers
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Convoy to Ottawa 2022
Nonprofit Organization
- 

Tucker Carlson Tonight
TV show
- 

Ethics Over Fear
Nonprofit Organization
- 

Viva Frei
Public Figure
- 

Joe Rogan
Public Figure
- 

Pierre Poilievre
Politician

See more of Freedom Convoy 2022 on Facebook

Court File No. CV-22-00088514-00CP

ZEXI LI

- and -

CHRIS BARBER, BENJAMIN
DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOES 1-60

Plaintiff (Moving Party)

Defendants (Responding Parties)

ONTARIO
SUPERIOR COURT OF JUSTICE

AFFIDAVIT OF JEREMY KING

CHAMP & ASSOCIATES
Equity Chambers

[Redacted Address]

Per: Paul Champ

LSUC#: [Redacted]

Solicitors for the Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ZEXI LI

Plaintiff/Moving Party

- and -

**CHRIS BARBER, BENJAMIN DICHTER, TAMARA LICH, PAT KING and
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JOHN DOE 56, JOHN DOE 57, JOHN DOE 58, JOHN DOE 59 and JOHN DOE 60**

Defendants/Responding Party

**FACTUM OF THE PLAINTIFF
(Motion for Extension of Interlocutory Injunction)**

PART I - THE FACTS

Overview

1. On February 7, 2022, this Honourable Court granted an interlocutory injunction in this proceeding, ordering a cessation of the intolerable horn honking that had been occurring in downtown Ottawa since the beginning of the Freedom Convoy protest on January 28, 2022.

2. The Court's Order directs that:

any persons with notice of the Court's Order are hereby restrained and enjoined from using air horns or train horns, other than those on a motor vehicle of a municipal fire department, in the geographic location anywhere in the City of Ottawa, in the vicinity of downtown Ottawa, being any streets north of Highway 417, otherwise known as the Queensway, for 10 days from the date of this Order.

3. Pursuant to the Order, the parties are to appear before the Court in Ottawa by videoconference on February 16, 2022 at 10:00AM for a hearing of the motion to continue the interlocutory injunction.

4. The Plaintiff seeks to have the Order issued on February 7, 2022 varied to include additional terms as follows:

- a. Enjoining and restraining any persons having Notice of the Order from ordering, requesting, inciting, counselling, promoting, or encouraging in any manner whatsoever, either directly or indirectly, via social media or otherwise, any person to use air horns or train horns in downtown Ottawa for as long as the Order is in effect; and
- b. Requiring the Defendant King to communicate the Order through his social media and other channels to all persons they know who are or who have been participating in the Freedom Convoy Protest in Ottawa; and
- c. Directing the Sheriff of the City of Ottawa to enforce the terms of this Order and directing the Ottawa Police Service and Ontario Provincial Police, as the case may be, to assist the Sheriff in enforcing the Order upon request, in accordance with 141 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43.

5. The Plaintiff also seeks an Order continuing the interlocutory injunction, on the varied terms described above, for a period of sixty (60) days.

6. An extension of the Order, including the requested additional terms, is required, since Freedom Convoy vehicles continue to occupy downtown Ottawa and the horn honking continues. The Plaintiff and other members of the proposed class continue to face irreparable harm.

Facts

7. Prior to the Court’s Order on February 7, 2022, Freedom Convoy vehicles had been honking horns near the Plaintiff’s apartment from morning to night since January 28, 2022, sometimes as late as 1:30AM. With the exception of some short periods of reprieve late in the night, the sound felt like it was nearly constant.¹

8. Following the Court’s Order on February 7, 2022, the Defendant Patrick King (“King”) broadcast a Facebook live video on his “The Real Pat King” Facebook page, with the words “BREAK BREAK BREAK” below it. In this video, King stated that he had a message that needed to go out to “every trucker, everybody on the Convoy”. He then advised viewers that a judge had issued an injunction against the horns for 10 days, and emphasized that there needed to be “silence on the horns”.²

9. The Plaintiff noticed that the horn honking—which had intensified during the motion hearing—stopped almost completely following King’s Facebook Live video³.

10. The loud and persistent honking in downtown Ottawa subsided significantly for several days.⁴ From around 3:30PM on February 7, 2022 to the morning of February 10, 2022, the Plaintiff heard very occasional horn honking around her building. On occasions when she did hear honking, it was generally fairly brief. In place of the honking, she noticed that the vehicles parked outside her building were loudly and frequently revving their engines instead.⁵

11. Following the granting of the Order, copies were distributed to media and daily newspapers and published online.⁶ In turn, the terms of the Order were reported on

¹ Affidavit of Zexi Li, affirmed February 4, 2022 [attached as Exhibit “A” to Affidavit of Zexi Li, affirmed February 11, 2022) at paras 6, 8-9

² Affidavit of Zexi Li, affirmed February 13, 2022 (“Li February 13 Affidavit”) at paras. 6-9

³ Li February 13 Affidavit at para. 10

⁴ Li February 13 Affidavit at para. 10; Affidavit of Sean Flynn affirmed February 14, 2022 (“Flynn Affidavit”) at paras. 9-10

⁵ Li February 13 Affidavit at para. 11

⁶ Affidavit of Trudy Moore (“Moore Affidavit”), affirmed February 15, 2022, at paras.3,5

widely by both local and national media.⁷ A copy of the Order was also published in a news release put out by the Ottawa Police Service (“OPS”), and published again in a tweet from the OPS Twitter account.⁸

12. However, Freedom Convoy leaders and organizers have, both directly and indirectly, encouraged the honking to continue. The Defendants Barber, Lich, and Dichter have failed to communicate the Order through their social media and other channels to Freedom Convoy participants, in violation of paragraph 3 of the current Order.⁹ On February 8, 2022, the Defendant King posted a Facebook Live video expressly encouraging Freedom Convoy participants to start honking their horns again, in violation of the Court’s Order.¹⁰

13. Since February 10, 2022, Freedom Convoy participants have started to engage in more frequent, prolonged and loud horn honking.¹¹ This behaviour has occurred in blatant disregard for this Court’s Order.

14. As of today’s date, there remain hundreds of large trucks parked in downtown Ottawa.¹² Media reports have estimated that approximately 400 trucks continue occupying the several blocks around the Parliament Building.¹³ There is no indication of the Convoy protestors leaving anytime soon.

15. On February 15, 2022, the City of Ottawa obtained its own interlocutory injunction Order, restraining and enjoining persons with notice of the Order from violating City of Ottawa By-Laws relating to: Open Air Fire; Fireworks; Noise; Use and Care of Roads; and Idling.¹⁴ Despite this Order, the honking downtown continues.¹⁵

⁷ Moore Affidavit at paras. 4, 6-8

⁸ Moore Affidavit at para. 9

⁹ Moore Affidavit at paras. 13-14

¹⁰ Affidavit of Jeremy King, affirmed February 15, 2022 (“King Affidavit”) at para. 11

¹¹ Li February 13 Affidavit at paras. 12-16; Flynn Affidavit at paras. 11-12

¹² Li February 13 Affidavit at para. 17 and Exhibit “B”; Flynn Affidavit at paras. 13-14

¹³ Li February 13 Affidavit at para. 17 and Exhibit “B”

¹⁴ Moore Affidavit at para. 14 and Exhibit “G”

¹⁵ Moore Affidavit at para. 15 and Exhibit “H”

16. Notwithstanding the fact that a separate injunction has now been granted to the City of Ottawa, the Plaintiff still seeks an extension of the more narrowly focused horn-honking injunction, with varied terms to encourage greater compliance and enforcement.

PART II - ISSUES AND ARGUMENT

17. The issue in this motion is whether this Honourable Court should vary and continue the interlocutory injunction Order restraining and enjoining persons with notice of the Order from using air horns and train horns in downtown Ottawa.

Legal Framework

18. Rule 40.02(2) provides that, where an interlocutory injunction is granted on a motion without notice, an extension may be granted on a motion with notice to every party affected by the order, unless the judge is satisfied that because a party has been evading service or because there are other exceptional circumstances, the injunction ought to be extended without notice to the party.

19. Rule 40.02(3) provides that an extension may be granted on a motion without notice for a further period not exceeding ten days.

20. In cases involving Defendants who are named as “John Does” or “Persons Unknown”, the notice requirement has been found to have been met where the Order has been posted and communicated publicly, giving anyone who wished to respond to the motion the opportunity to do so.¹⁶

¹⁶ See e.g. *Foxgate Development Inc. v. Jane Doe*, 2020 ONSC 5038 at para. 3. See also *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 SCR 1048 at para. 4, where the SCC noted that the initial *ex parte* Order for an interim injunction (against named Defendants as well as “John Doe, Jane Doe, and Persons Unknown”) was subsequently “amplified, refined, and extended” and then converted from an interim to interlocutory injunction.

21. In considering whether an interlocutory injunction ought to be extended, the test set out in *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311 continues to apply. That is, the Court must determine: (1) whether there remains a serious question to be tried; (2) whether irreparable harm will result to the plaintiff if the relief is not granted; and (3) which of the parties will suffer the greatest harm from the extension or refusal of an extension of the Order.

Persons affected by the Order have had sufficient notice

22. Persons affected by the Order have now been given sufficient notice of its terms, and no one has applied to the Court to have this Order varied or set aside.

23. In accordance with paragraph 8 of the Order, copies were distributed to media and daily newspapers and published online.¹⁷ In turn, the terms of the Order were reported widely by both local and national media.¹⁸ A copy of the Order was also published in a news release put out by the Ottawa Police Service (“OPS”), and published again in a tweet from the OPS Twitter account.¹⁹

24. It is clear that persons affected by the Order have received notice of it, since the honking associated with the Freedom Convoy protest largely ceased immediately following the granting of the Order.

25. Importantly, the Plaintiff’s own experience was that the honking intensified during the hearing of the motion by videoconference on February 7, 2022²⁰, but stopped almost entirely after the Defendant Patrick King (“King”) broadcast a video to Convoy participants on Facebook Live and YouTube immediately after the Court’s granting of the injunction.²¹ In his video, King advised “every trucker, everybody on the

¹⁷ Moore Affidavit at paras. 3, 5

¹⁸ Moore Affidavit at paras. 4, 6-8

¹⁹ Moore Affidavit at para. 9

²⁰ Li February 13 Affidavit at para. 5

²¹ Li February 13 Affidavit at para. 10

Convoy” that a judge had issued an injunction against the horns for 10 days and that there needed to be “silence on the horns” for that period.²²

26. In a CBC interview with a Convoy participant shortly after the granting of the Order, reporter Evan Dyer asked why the honking had stopped. The individual being interviewed replied that the honking downtown had stopped because of the Court’s Order, and that he had “heard the instructions” not to honk.²³

27. As for the Defendant King in particular, it is clear from his video broadcasts to Convoy participants that he has sufficient notice of the Order. In addition to this, however, the Plaintiff’s counsel also sent a copy of the Order to King by both email²⁴ and SMS text message²⁵ on February 10, 2022.

Grounds for continuing the Order

28. The Freedom Convoy protest in downtown Ottawa remains ongoing. The evidence of the Plaintiff and of another affiant, Sean Flynn, is that hundreds of large trucks are still parked in downtown Ottawa.²⁶ Media reports have estimated that approximately 400 trucks are still occupying the blocks around the Parliament Building.²⁷ There is no indication of the Convoy protestors leaving anytime soon.

29. The Court’s Order restraining honking was largely respected by Convoy participants for several days.²⁸ However, Convoy participants have more recently been engaging in more frequent, prolonged and loud horn honking.²⁹

30. The Plaintiff and other members of the proposed class face the same irreparable harm that existed when the Order was first granted. There is still a serious issue to be

²² Li February 13 Affidavit at para. 9

²³ Moore Affidavit at para. 8

²⁴ Moore Affidavit at para. 10

²⁵ Moore Affidavit at para. 11

²⁶ Li February 13 Affidavit at para. 17; Flynn Affidavit at paras. 13-14

²⁷ Li February 13 Affidavit at para. 17 and Exhibit “B”

²⁸ Li February 13 Affidavit at paras. 10-11; Flynn Affidavit at paras. 9-10

²⁹ Li February 13 Affidavit at paras. 12-16; Flynn Affidavit at paras. 11-12

tried with respect to the claim in nuisance, and the balance of convenience also still favours the granting of the injunction.

31. Notwithstanding the separate and broader interlocutory injunction granted to the City of Ottawa on February 14, 2022³⁰, the honking downtown has continued.³¹

32. To the extent that a number of Convoy participants are already flouting the Order and engaging in unlawful and harmful conduct, this should not be a reason for declining to continue the Order. Similarly, the Court should not decline to continue the Order based on any concerns it may have about the willingness of police to enforce it.

33. Faced with similar circumstances in *CNR v. Chief Chris Plain*, 2012 ONSC 7356, Justice Brown of this Court held that:

I cannot bring myself to decline to grant the continuation order sought by a plaintiff whose legal rights are being infringed and where the conduct of the protesters is causing irreparable harm to the plaintiff and others who rely on the spur line, even where the court has no practical means to enforce the order in the circumstances willingness of the local police agency to enforce a court order.³²

34. Similarly, in *Foxgate Developments Inc. v. Doe et al*, 2020 ONSC 5038, the Court granted the continuation of the injunction Order, notwithstanding the fact that the Defendants had “ignored this court process and ignored the orders of this court”.³³ In granting the continuation of the Order, the Court emphasized:

Open and flagrant disregard for regular order, laws and orders of this court cannot be condoned or tolerated. If the rule of law is not upheld in the circumstances of this case, chaos, mayhem and anarchy would prevail. This is not the way our Canadian society is. Central to our values is the rule of law. It applies to everyone, without exception.³⁴

³⁰ Moore Affidavit at para. 14 and Exhibit “G”

³¹ Moore Affidavit at para. 15 and Exhibit “H”

³² *CNR v. Chief Chris Plain*, 2012 ONSC 7356 at para. 44

³³ *Foxgate Developments Inc. v. Doe et al*, 2020 ONSC 5038 (“*Foxgate*”) at para. 71

³⁴ *Foxgate* at para. 77

35. Accordingly, the Plaintiff requests that the interlocutory injunction be continued for a further period of sixty (60) days, and on varied to include the additional terms described below.

Grounds for varying the Order

36. The Plaintiff seeks to have the Order varied to include: (1) a term enjoining and restraining any persons having Notice of the Order from ordering, requesting, inciting, counselling, promoting, or encouraging in any manner whatsoever, either directly or indirectly, via social media or otherwise, any person to use air horns or train horns in downtown Ottawa for as long as the Order is in effect; and (2) a term requiring the Defendant King to communicate the Order through his social media and other channels to all persons they know who are or who have been participating in the Freedom Convoy Protest in Ottawa.

37. It appears that Convoy participants have become emboldened to act with blatant disregard for the Court's Order, in part due to the messaging by the Freedom Convoy's leadership.

38. Immediately after the Order was granted, the Defendant King notified Convoy participants of this Order in a Facebook Live video and directed them to silence their horns for 10 days.³⁵ King's instructions to Convoy participants appeared effective, as the honking did largely stop for a several days. Unfortunately, King subsequently released another Facebook Live video on February 8, 2022, encouraging Convoy participant to ignore the Court Order and resume their honking.³⁶

39. The Defendants Lich, Barber, Dichter have indirectly encouraged the honking, by failing to comply with paragraph 3 of the existing Order which required them to communicate the Order to Convoy participants through their social media and other

³⁵ LI February 13 Affidavit at para. 9

³⁶ King Affidavit at para. 11

channels.³⁷ In fact, the Defendant Lich has mischaracterized this Honourable Court’s Order by posting a comment to the Freedom Convoy 2022 public Facebook page stating that “We have the support of a Superior Court judge who has stated numerous times that we have a legal right to be here and to protest peacefully”. Lich does not communicate the terms of this Court’s order anywhere in that post, or anywhere else on the Freedom Convoy 2022 Facebook page.³⁸

40. The Plaintiff submits that compliance with the Order may be better achieved through the inclusion of additional terms focused on the actions of the Convoy’s leadership. If such language were included in the Order and disobeyed, the Plaintiff could then initiate contempt proceedings against individuals encouraging participants to breach the Order.³⁹

41. The Plaintiff submits that compliance with and enforcement of the Order may also be better achieved through the inclusion of an additional term directing enforcement in accordance with section 141 of the *Court of Justice Act*.⁴⁰

PART III - ORDER REQUESTED

42. The Plaintiff submits that the motion should be granted and the Court should issue an Order extending the interlocutory injunction for a period of sixty (60) days and varying the Order to include additional terms as follows:

- d. Enjoining and restraining any persons having Notice of the Order from ordering, requesting, inciting, counselling, promoting, or encouraging in any manner whatsoever, either directly or indirectly, via social media or otherwise, any person to use air horns or train horns in downtown Ottawa for as long as the Order is in effect; and

³⁷ King Affidavit at paras. 3-12 and 12; Moore Affidavit at paras. 12-13

³⁸ King Affidavit at paras. 6 and 12

³⁹ See e.g. *Alberta Health Services v Pawlowski*, 2021 ABQB 493 at paras. 27-28, where contempt proceedings were initiated, following violation of a similar term in an injunction order

⁴⁰ Similar to the language included at para. 4 of the Injunction Order granted to the City, dated February 15, 2022 (Exhibit “H” to the Moore Affidavit)

- e. Requiring the Defendant King to communicate the Order through his social media and other channels to all persons they know who are or who have been participating in the Freedom Convoy Protest in Ottawa; and
- f. Directing the Sheriff of the City of Ottawa to enforce the terms of this Order and directing the Ottawa Police Service and Ontario Provincial Police, as the case may be, to assist the Sheriff in enforcing the Order upon request, in accordance with 141 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43.

43. The Plaintiff seeks costs of this motion in the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Ottawa, Ontario this 15th day of February, 2022.

Paul Champ ([REDACTED])
Christine Johnson ([REDACTED])
Bijon Roy ([REDACTED])
Emilie Taman ([REDACTED])

CHAMP & ASSOCIATES
Barristers & Solicitors

 www.123.ca
Solicitors for the Plaintiff

SCHEDULE A - LIST OF AUTHORITIES

Alberta Health Services v Pawlowski, 2021 ABQB 493

CNR v. Chief Chris Plain, 2012 ONSC 7356

Foxgate Development Inc. v. Jane Doe, 2020 ONSC 5038

MacMillan Bloedel Ltd. v. Simpson, [1996] 2 SCR 1048

SCHEDULE B - STATUTES AND REGULATIONS

Courts of Justice Act, R.S.O. 1990, c. C-43 at section 141

Rules of Civil Procedure, RRO 1990, Reg. 194, Rules 40.01, 40.02

Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

Consolidation Period: From December 2, 2021 to the e-Laws currency date.

Last amendment: 2021, c. 34, Sched. 4.

**PART VII
COURT PROCEEDINGS**

Civil orders directed to sheriffs

141 (1) Unless an Act provides otherwise, orders of a court arising out of a civil proceeding and enforceable in Ontario shall be directed to a sheriff for enforcement.

Police to assist sheriff

(2) A sheriff who believes that the execution of an order may give rise to a breach of the peace may require a police officer to accompany the sheriff and assist in the execution of the order. R.S.O. 1990, c. C.43, s. 141.

Courts of Justice Act
R.R.O. 1990, REGULATION 194
RULES OF CIVIL PROCEDURE

Consolidation Period: From October 15, 2021 to the e-Laws currency date.

Last amendment: 709/21.

PRESERVATION OF RIGHTS IN PENDING LITIGATION

RULE 40 INTERLOCUTORY INJUNCTION OR MANDATORY ORDER

How Obtained

40.01 An interlocutory injunction or mandatory order under section 101 or 102 of the Courts of Justice Act may be obtained on motion to a judge by a party to a pending or intended proceeding. R.R.O. 1990, Reg. 194, r. 40.01.

Where Motion Made without Notice

Maximum Duration

40.02 (1) An interlocutory injunction or mandatory order may be granted on motion without notice for a period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 (1).

Extension

(2) Where an interlocutory injunction or mandatory order is granted on a motion without notice, a motion to extend the injunction or mandatory order may be made only on notice to every party affected by the order, unless the judge is satisfied that because a party has been evading service or because there are other exceptional circumstances, the injunction or mandatory order ought to be extended without notice to the party. R.R.O. 1990, Reg. 194, r. 40.02 (2).

(3) An extension may be granted on a motion without notice for a further period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 (3).

Labour Injunctions Excepted

(4) Subrules (1) to (3) do not apply to a motion for an injunction in a labour dispute under section 102 of the Courts of Justice Act. R.R.O. 1990, Reg. 194, r. 40.02 (4).

Court File No. CV-22-00088514-00CP

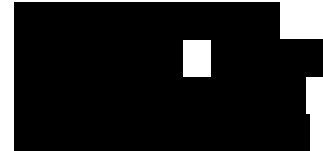
ZEXI LI

- and -

CHRIS BARBER, BENJAMIN
DICHTER, TAMARA LICH, PATRICK KING and
JOHN DOES 1-60

Plaintiff (Moving Party)

Defendants (Responding Parties)

ONTARIO
SUPERIOR COURT OF JUSTICEFACTUM OF THE MOVING PARTY
(Motion returnable February 16, 2022)CHAMP & ASSOCIATES
Equity ChambersPer: Paul Champ
LSUC#: [REDACTED]

Solicitors for the Plaintiff

Court of Queen's Bench of Alberta

Citation: Alberta Health Services v Pawlowski, 2021 ABQB 493

Date: 20210629
Docket: 2101 05742
Registry: Calgary

Between:

Alberta Health Services

Applicant

- and -

Artur Pawlowski & Dawid Pawlowski

Respondents

**Reasons for Decision
of the
Honourable Mr. Justice A.W. Germain**

A. Introduction

[1] On May 6, 2021, Alberta Health Services (AHS) obtained a court order from Associate Chief Justice J. Rooke, targeting the Respondent Christopher Scott and other respondents named as John Doe(s) and Jane Doe(s), to assist in enforcing Covid -19 community compliance. AHS alleges the Respondents have breached this Order and as a result are guilty of contempt of a court order. For the reasons outlined in this ruling, I agree with the submission of AHS and cite Pastor Artur Pawlowski and Dawid Pawlowski in contempt.

[2] I have also issued two other rulings involving Pastor Artur Pawlowski and Christopher Scott relating to the same or similar issues. The same legal principles apply in each case. I have

purposely repeated myself throughout the rulings so each can provide transparency about my ruling without resort to the companion rulings. The companion rulings are **AHS v Street Church**, 2021 ABQB 489 and **AHS v. Scott**, 2021 ABQB 490.

B. Background

[3] The World Health Organization declared the Novel Coronavirus (Covid -19) to be a pandemic in March 2020. This prompted the Canadian Government to make health recommendations and provincial health authorities to impose Public Health Orders. These affected the liberties of the citizens for the greater community goal of their protection, from a virus of which initially, little was known. By May 2021, Alberta was in what medical experts called the third wave of the pandemic. Active cases in Alberta (including cases of more dangerous variants that had developed elsewhere in the world) caused increasing numbers of Covid-19 infections. AHS took steps to reduce the impact of this third wave, as both hospitals and the intensive care wards became dangerously overcrowded.

[4] Some Albertans, including Pastor Artur Pawlowski and his brother Dawid Pawlowski (the Respondents), openly flaunted the efforts of AHS to control the third wave of the virus in Alberta. In response, AHS obtained an Injunctive Order from Associate Chief Justice Rooke on May 6, 2021 (the Rooke Order).

[5] The Respondents operate a Street Church in Calgary (the Church) which, during the month of April and May 2021, was holding Saturday church services in deliberate violation of the efforts of AHS to control the spread of the Covid 19 virus by limiting crowds, requesting social distancing, and requiring that face masks be worn in any public area.

[6] The Rooke Order, restrained Albertans (identified as John and Jane Does) from:

- (i) Organizing an in-person gathering, including requesting, inciting or inviting others to attend an “Illegal Public Gathering”;
- (ii) Promoting an Illegal Public Gathering via social media or otherwise; or
- (iii) Attending an Illegal Public Gathering in a public or private place.

[7] The Rooke Order defined an “Illegal Public Gathering” as any gathering that did not comply with the requirements of current CMOH Orders (Chief Medical Officer of Health Orders) including, but not limited to:

- (a) Masking requirements;
- (b) Attendance limits applicable to indoor or outdoor gatherings; and
- (c) Minimum physical distancing requirements.

[8] On May 8, 2021, members of the Calgary Police Service (CPS) observed the Respondents in and around the Church and concluded they were in breach of the Rooke Order. They were both arrested shortly after the Respondents left the church. They were released by court order on Monday, May 10, 2021 after appearing before the Court of Queen’s Bench. On May 23, 2021, I heard an application to determine if the Respondents were in breach of the Rooke Order and if so, if their breach amounted to a contempt.

[9] The Respondents were intentional objectors to the restrictions imposed by AHS. If the Rooke Order applied to them, they were in breach of it. The dispute in this case is whether AHS

has proven that the Respondents' breaching of the Rooke Order made them in contempt of that Order.

C. The Position of the Parties

[10] The position of AHS is that they have established by their affidavit evidence and the admissions of the Respondents, the Rooke Order was breached by the Respondents after it was granted. They say that this breach amounts to a contempt beyond a reasonable doubt because the three criteria (knowledge, certainty of the terms of the order, and deliberate conduct) exist in this case to prove contempt beyond a reasonable doubt

[11] While the Respondents are prepared to tacitly admit that they were in breach of the Rooke Order, they assert that the battleground in this case is not the existence of the Rooke Order, but whether it applies to them. They submit that it does not because there was improper or no service on them, they were not made aware of the prohibitions set out in the Order, they were not named in the Order, and it is uncertain whether it applied to church services. The position taken by learned defence counsel will be amplified as each of the Respondents' defences are considered in turn.

D. Legal Analysis

1. The Facts

[12] The evidence of Detective K. Laustsen is substantially confirmed by the videoed exhibits attached as exhibits to her affidavit and is not significantly disputed in the opposing affidavits filed by the Respondents. If a picture is worth a thousand words, a video, particularly those as graphic as the exhibits attached to the Laustsen affidavit, is worth a million words.

[13] If anything, the affidavit understated the combative, insulting manner in which the Respondents conducted themselves on May 8, 2021 – this being the date of the service of the Rooke Order upon them and their subsequent arrest by the CPS.

[14] I can do no better then to quote from the Laustsen affidavit (modified for time continuity, and with irrelevant discourse removed) as the cornerstone of the facts in this case:

17. I watched [a video of a Livestream Event 1 (start 9:28 am May 8, 2021),] of which the following is a summary of my observations:

- a. At approximately 9:32 am, an interview was conducted with A. Pawlowski inside the Church, of which the following is a summary:
 - i. A. Pawlowski is observed not wearing a mask, speaking to people not wearing masks, and not practicing social distancing;
 - ii. A. Pawlowski explains his interpretation of the Court Injunction;
 - iii. A. Pawlowski explains his belief that;
 - iv. A. Pawlowski explains the phone call he received from CPS explaining “the new law that you cannot oppose the Government”;

- v. A. Pawlowski is portrayed in this video as a leader in the Church, as observed during the interview and his interactions with attendees inside the Church;
- vi. I captured a 4-minute portion including the above noted observations of Livestream Event 1 and saved it as Exhibit H;
- b. At approximately 9:58 am, an interview was conducted with D. Pawlowski outside the Church, of which the following is a summary:
 - i. D. Pawlowski is observed not wearing a mask, speaking to people not wearing masks, and not practicing social distancing;
 - ii. D. Pawlowski references Pfizer explaining the Government and witches are “in on it,” brewing potions, they want people to obey and be a slave; and
 - iii. I captured a 2-minute portion including the above noted observations of Livestream Event 1 and saved it as Exhibit I.

18. I watched the Livestream Event 2, (Start at 9:58 am May 8, 2021) , and made the following observations:

- a. At approximately 9:59 am on May 8, 2021, Reicher provided "pre-announcements" to the attendees, of which the following is a summary:
 - i. Reicher read the CPS Advisory to attendees. The following portion was read verbatim:

The Calgary Police Service continues to work with our provincial partners to address those who are inclined to ignore the public health orders in place to keep our communities safe.

In addition to the enforcement framework that was announced earlier in the week, Alberta Health Services has obtained a Court of Queen’s Bench Order that applies to gatherings including protests, demonstrations and rallies - this is a significant development.

This Order imposes new restrictions on organizers of protests and demonstrations requiring compliance with public health orders in effect relating to masking, physical distancing, and attendance limits. In the event of non-compliance, the Order provides enforcement powers, including powers of arrest, for those that are organizing, promoting and attending any public gathering where public health orders are not being followed.

We continue to work with our partners and the community to stop the spread of COVID-19. We ask those who may be considering organizing or participating in any outdoor events to ensure they are familiar with public health order requirements and to do their part to prevent further spread of the virus.

- ii. I captured a 3-minute 52 second portion including the above noted observations of Livestream Event 2 and saved it as Exhibit J.

- b. At approximately 10:36 am on May 8, 2021, attendees of the Church are singing, of which the following is a summary (edited by me):
 - i. (not repeated)
 - ii. I counted the number of individual heads visible in the recording and identified 84. As there were several areas obstructed by other people, I estimate attendance numbers of the Church were between 85-100 people;
 - iii. I captured a 45 second portion including the above noted observations of Livestream Event 2 and saved it as Exhibit K.

[15] Paragraph 19 of the Laustsen affidavit deals with the service of the Rooke Order on May 8, 2021. Key portions are set out below with superfluous and irrelevant wording removed:

19. I watched the Livestream Event 3, (started 10:38 am May 8, 2021), and made the following observations:

- a. Approximately 10:58 am on May 8, 2021 members of the CPS attended the front door of the Church, of which the following is a summary:
 - i. A large gathering had formed outside, consisting of approximately 20 people, a mix of masked and unmasked participants. This group followed CPS to the door of the Church;
 - ii. An unknown male opened the front door of the Church and advised “we are having a religious service.” Music could be heard playing from inside;
 - iii. D. Pawlowski presented himself at the front door and engaged in conversation with Cst. Develter;
 - iv. As observed in the video, I noted the attendees deferred to D. Pawlowski as being in charge, the person with the authority of the Church to speak to CPS and the matter that brought them to attend the Church;
 - v. Cst. Develter told D. Pawlowski the purpose of CPS’s attendance was to serve the Court Injunction. D. Pawlowski replied “if you want to serve it, serve it at the altar.” Cst. Develter declined and advised service had been made and placed the Court Injunction, observed in a plastic covering, on the ground in front of D. Pawlowski. D. Pawlowski stated “if you want to serve it, serve it like a man”;
 - vi. The surrounding crowd began to encroach on officers and to shout “get out, get out.” As CPS disengaged from the Church, people began to follow them off the property, continuing to shout at CPS members, some becoming aggressive towards members;
 - vii.
 - viii. D. Pawlowski followed CPS members off the property shouting “Where were you yesterday when there were 100s of people on the patios.” Dawit [sic] continued to walk down the street following CPS members to their vehicles;
 - ix. D. Pawlowski continued to speak to the video recording, unmasked, not maintaining social distance. People are observed shouting at police and

neighbouring community residents outside watching from their yards wearing masks;

x. I captured a 12-minute 2 second portion including the above noted observations of Livestream Event 3 and saved it as Exhibit M.

[16] The affidavit of Detective Laustsen continues with a reference back to the in-church services which were videoed and posted live. In Detective Laustsen's affidavit, she describes at para 20 events that transpired after the direct service of the Rooke Order had been made on Dawid Pawlowski. Due to Dawid Pawlowski's belligerence, the service was actually made by dropping a copy of the Rooke Order in a plastic see-through bag at his feet. Under the circumstances, including his wilful refusal to accept the document, his insistence that it be served at the altar, and his verbal attack on the CPS following the service of the order; I conclude beyond a reasonable doubt that he knew what was being served upon him and was wilfully and deliberately refusing to take the document for the purpose of potentially enabling him to subsequently argue that he wasn't served.

[17] Let me now continue (but with the removal of superfluous, often hateful and disrespectful commentary by the speakers) with the comments from Detective Laustsen taken from her affidavit and supported by the attached video exhibits, of events which occurred after the service of the Rooke Order:

20. I watched the Livestream Event 2, (started 9:58, running 2.5 hours, May 8, 2021), and made the following observations (continued from paragraph 18):

a. Approximately 11:03 am on May 8, 2021, A. Pawlowski speaks to attendees and invites leaders up to the front podium, of which the following is a summary:

i. A Pawlowski invited any attendee present in the Church running for political office or in a church leadership position, to come to the front to pray for current leaders;

ii. 11 people attended the front, including D. Pawlowski, standing shoulder to shoulder across the front stage area. No one was wearing masks or practicing social distancing;

iii. A Pawlowski makes critical remarks about; and

iv. I captured a 4-minute portion including the above noted observations of Livestream Event 2 and saved it as Exhibit N.

b. At approximately 11:06 am on May 8, 2021, A. Pawlowski speaks to attendees from the front podium, of which the following is a summary:

i. A. Pawlowski speaks about;

ii. A Pawlowski makes disparaging comments about.....;

iii. I captured a 9-minute portion including the above noted observations of Livestream Event 2 and saved it as Exhibit O.

c. Approximately 11:19 am on May 8, 2021, A. Pawlowski speaks to attendees from the front podium, of which the following is a summary:

i. A Pawlowski references a passage from

- ii. A. Pawlowski describes how a “Swat” team came to the door stating “they send a swat team, just a few minutes ago, there was a swat team outside those doors. A swat team for a Church, a swat team for a peaceful assembly. A swat team against a Pastor. Not against a gang, not against terrorists, no, they reward terrorists....”;
 - iii. A. Pawlowski makes critical remarks about
 - iv. A. Pawlowski makes disparaging remarks about all.....
 - v. A. Pawlowski states that
 - vi. A. Pawlowski claims those who believe in the current pandemic are “brain washed”; and
 - vii. I captured a 11-minute 40 second portion including the above noted observations of Livestream Event 2 and saved it as Exhibit P.
- d. Approximately 11:31 am on May 8, 2021, A. Pawlowski speaks to attendees from the front podium, of which the following is a summary:
- i. A. Pawlowski asked a question to the audience: “What wrong am I doing today,” and then answers by stating “I am just standing here, socially and physically distanced from you, more than six feet, I’m exempt, I don’t have to wear a mask, so why do they hate me so much? Because I am teaching you. That’s the only crime I have committed. I am teaching you the truth and the truth shall set the captives free”;
 - ii. A. Pawlowski stated “they are threatening them, they’re telling them they aren’t allowed to do that, saying it’s against the law, **they brought an Injunction from a Court**, (emphasis mine) I don’t know what kind of court. Not the court of the lands. Not the Court according to the Charter of Rights and Freedoms.”
.....;
 - iii.
 - iv. I captured a 1-minute 30 second portion including the above noted observations of Livestream Event 2 and saved it as Exhibit Q.

[18] Later, on Saturday, May 8, 2021, both Artur Pawlowski and his brother Dawid Pawlowski were seen driving away from the Church. Their vehicle was stopped by CPS and they were arrested with some difficulty and resistance.

[19] By 10:58 a.m. in the morning, Dawid Pawlowski was in fact actually served with the Rooke Order. Given his refusal to accept the Rooke Order, I am satisfied that dropping the Order at his feet was an acceptable form of personal service. His comments to the CPS, as they elected to depart (to preserve the peace), also make clear his knowledge about what he had been served with.

[20] Shortly thereafter, but in any event before 11:03 a.m., I find Pastor Artur Pawlowski had full knowledge of the Rooke Order and I draw an inference that he had received directly or indirectly a copy of it. His detailed knowledge of it, identified in his comments captured on video, militate against any other inference.

[21] From the above, I find as a fact that both Dawid and Artur Pawlowski were effectively served with the Rooke Order, had full knowledge about it and the prohibitions contained therein, and further that they knew the Order applied to them.

[22] I am satisfied on the evidence that the Respondents each received good and sufficient notice of the Rooke Order.

[23] Despite this, they continued to conduct and participate in the church service, a prohibited public gathering, contrary to the prohibitions contained in the Rooke Order. No other finding on these facts is possible.

2. The Standard of Proof

[24] A judge considering whether a contempt of a court order has occurred must determine the existence of the below discussed three essential elements to a level of proof beyond a reasonable doubt. The Supreme Court of Canada in *R v Starr*, 2000 SCC 40 (at para 50) described proof beyond a reasonable doubt as something less than absolute certainty, but much greater than probable guilt. This is the standard that I propose to apply.

3. The Test for Contempt

[25] Three elements are required for a finding of contempt:

- (1) That the order alleged to have been breached must state clearly and unequivocally what should and should not be done;
- (2) That the party alleged to have breached the order must have had actual knowledge of it; and
- (3) The party allegedly in breach must have intentionally done the act that the order prohibited or intentionally failed to do the act that the order compelled (*Carey v Laiken*, 2015 SCC 17 at paras 32-35 [*Carey*]).

[26] Even if the test is made out beyond a reasonable doubt, if a respondent has taken reasonable steps to comply with the order, the Court retains the discretion to deny an application for contempt (*Carey* at para 47).

4. Applying the Test to the Facts

[27] On May 8, 2021, when the Respondents were arrested, the first paragraph of the Rooke Order read as follows:

1. The named individual Respondents and any other person acting under their instructions or in concert with them or **independently to like effect** and with Notice of this Order, shall be restrained anywhere in Alberta from (emphasis mine):
 - a. organizing an in-person gathering, including requesting, inciting or inviting others to attend an “Illegal Public Gathering”;
 - b. promoting an Illegal Public Gathering via social media or otherwise;
 - c. attending an Illegal Public Gathering of any nature in a “public place” or a “private place,” which each have the same meaning as given to them in the Public Health Act.

[28] The Rooke Order also went on to define certain of the above terms. With respect to the alternate arguments of counsel, I conclude that the Rooke Order, as it existed on May 8, 2021, was both clear and unequivocal, in that it told potential contemnors that they could neither organize, attend or promote public gatherings nor incite others to do so. The Respondents did all of this, but at a bare minimum, both of the Respondents were present at an illegal public gathering (the church service) and had knowledge of the Rooke Order.

[29] As the issues of service, notice and knowledge were a cornerstone of the Respondents' answer to the contempt allegation, I have already explained why I have concluded both Pastor Artur Pawlowski and Dawid Pawlowski were both effectively served with and had knowledge of the Rooke Order. The bulletin from the CPS in this case may have been enough to prove notice, but I need not go that far because we have videos that show Dawid Pawlowski being served with the Rooke Order and Pastor Artur Pawlowski discussing with attendees at the Church his knowledge of the Rooke Order.

[30] I need not dwell on the third part of the contempt test. Both the Pawlowski brothers make a virtue of their civil disobedience in relation to the restrictions imposed upon them by the Covid - 19 AHS Public Health Orders. Their defiant posturing caught on the videos make clear that their breach was not accidental, but wilful and deliberate.

[31] I conclude that Pastor Arthur Pawlowski and his brother Dawid Pawlowski did have factual knowledge of the Rooke Order and during a church service conducted in Calgary on Saturday morning May 8, 2021, they were in breach of the Order. This begs the question: are they guilty of contempt? Their defences follow.

5. Discussion of the Defences Raised

i. The Impact of the Wording Change to the Rooke Order

[32] After the arrest of the Respondents, counsel for the named Respondent, Christopher Scott, and others appeared again before Associate Chief Justice Rooke and achieved a change in the wording of the Rooke Order. This change took effect May 13, 2021. Paragraph 1 became paragraph 2 and removed the words "independently to like effect." The Respondents concede that they must take the Rooke Order as it existed on the day it affected them. Although they cannot take the benefit of what they submit narrowed, to the point of exclusion, the Respondents from the operation of the Rooke Order; they submit that this change should go to my discretion to not hold them in contempt.

[33] I conclude that the Rooke Order of May 6, 2021, does not restrict enforcement of it to those connected to the named target Christopher Scott and the Whistle Stop Café. Instead, it applies to all individuals willing to breach the operative terms of the Order after having received notice of it. A connection to the Whistle Stop Café or its operators was not (at least on May 8, 2021) a necessary requirement to identify potential contemnors on the date of this arrest. I will leave for another case the impact of the wording change.

[34] The Respondents further assert that the phrase "independently to like effect," found in the May 6, 2021 version of the Rooke Order cannot be read to apply to church services in Calgary, but instead means similar to the targeted events. However, a plain reading of the Rooke Order (as it existed on May 8, 2021) suggests the phrase "like effect" relates to the planning and

participation in public events. I respectfully disagree with the Respondents' interpretation of the Rooke Order.

[35] A religious service to which the public is invited is a gathering. It was not necessary, in my view, for the Rooke Order to specifically identify religious services as a type of public gathering to which the Order was directed. Further, the use of nominal respondents - the John Doe and Jane Doe in the style of cause of the Order make clear that the Order was intended to cover individuals not specifically named in the Order. One way of looking at this issue would be to consider whether such individuals would be caught by the Rooke Order if they, objectively and acting reasonably, could "see" themselves in it. Would it be objectively reasonable for them, on review of the Order, to identify themselves with the conduct that was prohibited. If so the order is unambiguous.

ii. Are the Respondents Bound by this Ex Parte Order?

[36] Counsel for the Respondents points out that although the Respondents had a pre-existing unpleasant relationship with the Department of Justice over Covid -19 restrictions, they were neither named nor notified when AHS appeared before Associate Chief Justice Rooke to obtain the Rooke Order. The assertion is that I should conclude that the Rooke Order was never intended to apply to them. They point to some of the discussion between ACJ Rooke and the litigants on May 6, 2021, as implying a restriction in the intent of the reach of the Rooke Order. I reject this argument. AHS is not to be confabulated with the Department of Justice. They are a health organization with order making power, while the Department of Justice is, among other things, a law enforcement prosecutorial department.

[37] AHS had the legal and statutory right to apply for an injunction on an ex parte basis. They did so. The fact that the Respondents neither personally received notice nor are specifically named in the Rooke Order does not prevent independent enforcement of it against them. The fact that there was a discussion in court about who might be caught up in the Order was just that: a discussion. The Rooke Order must be interpreted based on what it said and the message it conveyed; not the discussion leading up to it. Many orders of this nature are obtained on an ex-parte basis, so much so that the *Alberta Rules of Court*, Alta Reg 124/2010 recognize this practice. See r 6.4. This argument is also cut down by the fact that Pastor Artur Pawlowski was videotaped talking about the action taken by AHS and reviewing the press announcement from CPS, and appears, after being told by a third party, to assume the Rooke Order applies to religious services.

iii. Are the Respondents Bound by the Rooke Order as "John Does?"

[38] This will not be the first nor likely the last time that parties not specifically identified in a court injunction are prosecuted on an allegation of being in contempt of it. The concept is not new. British cases recognized this ability in the courts over 100 years ago. In Canada, it has been recognized particularly in the area of public order breaches, intellectual property breaches or labour law breaches, that "John Does" are commonly utilized and identified in the orders.

[39] While the process has been criticized, others have also identified that it reduces the multiplicity of litigation, and serves as a warning for others who might contemplate acting in defiance of court orders. Canadian courts are an important protection in a rule of law jurisdiction. The rule of law would quickly break down if court orders could be avoided, ignored or

disobeyed with impunity, simply because every potential contemnor was not identified specifically.

[40] In the context of this case, there has been an increase over time during the pandemic of open disobedience of AHS Public Health Orders. With infinite time and resources, AHS could return to court multiple times per day to get injunctions which they feel are needed to protect the public. This is not practical. *MacMillan Bloedel Ltd v Simpson*, [1996] 2 SCR 1048, 1996 CanLII 165 [*MacMillan*] confirms that injunctions against the public at large, identified as John Doe and Jane Doe, are legally enforceable in Canada. At para 31, MacLachlan J stated:

It may be confidently asserted, therefore, that both English and Canadian authorities support the view that non-parties are bound by injunctions: if non-parties violate injunctions, they are subject to conviction and punishment for contempt of court. The courts have jurisdiction to grant interim injunctions which all people, on pain of contempt, must obey. The only issue -- and one which has preoccupied courts both in England and, to a lesser extent, here -- is whether the wording of the injunction should warn non-parties that they, too, may be affected by including language enjoining the public, or classes of the public, from committing the prohibited acts.

[41] Earlier, at para 27, McLachlin J explained, anyone who disobeys an “order or interferes with its purpose may be found to have obstructed the course of justice and hence be found guilty of contempt of court.” See also para 40.

[42] At para 42, McLachlin J advised it is not essential that the order refer to unknown persons. “However, the long-standing Canadian practice of doing so is commendable because it brings to the attention of such persons the fact that the order may constrain their conduct.”

[43] The Supreme Court most recently affirmed *MacMillan* in *Google Inc v Equustek Solutions Inc*, 2017 SCC 34, where Abella J at para 28 wrote:

Google’s first argument is, in essence, that non-parties cannot be the subject of an interlocutory injunction. With respect, this is contrary to the jurisprudence. Not only can injunctive relief be ordered against someone who is not a party to the underlying lawsuit, the contours of the test are not changed. As this Court said in *MacMillan Bloedel Ltd v Simpson*, injunctions may be issued “in all cases in which it appears to the court to be just or convenient that the order should be made . . . on terms and conditions the court thinks just.”

[44] Applying *MacMillan* in *Siksika Nation v Crowchief*, 2016 ABQB 596, where Mr. Crowchief was supported by several unnamed and unknown band members in protesting the perceived lack of consultation during the construction of a housing development, Hunt McDonald J concluded at para 78:

Therefore, I find that naming Unknown Defendants in this action does not invalidate it. The order for an injunction in this case is enforceable against all persons, including those who are not parties to the action, who violate it; those who violate it may be found guilty of contempt for interfering with justice provided they have received notice of the injunction and any subsequent application for contempt.

[45] As it relates to the Covid-19 pandemic, in *Nova Scotia (Attorney General) v Freedom Nova Scotia*, 2021 NSSC 170, Norton J cited *MacMillan* while granting an injunction to the Province of Nova Scotia to prevent a large in-person gathering to protest Covid-19 restrictions. The decision emphasized the practice of clear wording and including the designation of “John Doe, Jane Doe or Persons Unknown.” At para 36, Norton J explained:

It is appropriate that the order includes clear language that law enforcement officers and other law enforcement agencies will enforce the prohibitions. It is appropriate to include notice that law enforcement officers will arrest and charge anyone in breach of the prohibitions.

[46] In this case, video-recorded evidence attached as exhibits to the affidavits clearly confirm that the Respondents and their key circle of supporters openly discussed the Rooke Order and knew and expressed recognition that it applied to them. The wording of the Rooke Order as it existed on May 8, 2021, when they were arrested, made clear that they were caught within the wording of the Order and they were among the others identified in the Order.

iv. Does the Manner of the Arrest of the Respondents and their Detention Constitute a Breach of the *Charter* that can lead to a s 24 Remedy of a Stay of the Contempt Proceedings?

[47] The Respondents assert that when they were arrested in the early afternoon on Saturday, May 8, 2021, and not brought before me to deal with interim release until the afternoon of May 10, 2021, their *Charter* rights were violated. They assert first that they were improperly detained and were not afforded the right to counsel. This they say provides them with a *Charter* remedy that would effectively stay the contempt application. The position of AHS is to the contrary.

[48] The Rooke Order did permit CPS discretion about whether the individuals should have been released on a promise to appear before the Court of Queen’s Bench or brought before a judge. The time limits of 24 hours to go before a judicial officer set out in s 503(1) of the *Criminal Code*, RSC 1985, c C-46 do not apply in this context. It would be a useful standard to apply, but there is no legal requirement that they do so. As policy, all individuals in custody should be given an opportunity to obtain release as early as possible.

[49] In *Charter* litigation, it is the individual who raises the *Charter* breach that must prove it on a balance of probabilities. Here, the video evidence discloses that at the time of their arrest, both Respondents were vociferously objecting and resisting arrest and were very volatile, angry, and unreasonable. Their arrest on Saturday meant from a practical point of view that they could not be brought before the Court of Queen’s Bench any earlier than Monday, May 10, 2021. They were released on Monday, May 10, 2021.

[50] Their affidavits indicate that they were not allowed to call a lawyer, were denied basic necessities and were treated badly. Even assuming all of that to be true (although I recognize that the CPS have not had a chance to respond to those specific allegations), it would still not amount to a *Charter* remedy as high as a stay of proceedings. First AHS, the Applicant, is not the CPS, nor the Department of Justice. They are an independent health entity fighting to save lives during a global pandemic. To fasten them with allegations of wrongdoing on the part of CPS would be inappropriate.

[51] While the Court would always recommend that people taken into custody be given immediate access to a lawyer, to elevate that potential breach, in a civil context, to a stay of the

contempt proceeding would be an overzealous application of s 24 of the *Charter*. If I borrow from criminal law, *Charter* breaches which occur after the infraction most often (if they result in any remedy) either exclude evidence, or mitigate the sentence (sanction); they rarely result in a procedural stay.

[52] The Respondents' fallback position is that I should consider these breaches in the sanction phase of this contempt proceeding, if it goes that far. AHS also agrees that this is the appropriate place for this discussion. I think that is a sound proposition. As a general proposition in contempt proceedings, when the *Charter* is engaged after the events that led to the arrest and apprehension, *Charter* breaches should (barring exceptional circumstances), go to issues of sanction and not a stay of proceeding. In the criminal law process in Canada, a *Charter* breach may exclude evidence, it will less often lead to a stay of proceedings.

v. Is there a Reasonable Excuse for the Breach of the Rooke Order?

[53] This ruling, involving both Artur Pawlowski and his brother Dawid Pawlowski, was focused on the technical issues that the Respondents could not be bound by the Rooke Order because they were not named and they were not identified with the group that could reasonably be identified as John Does. However, in a companion application argued before this one, Pastor Artur Pawlowski suggested that the AHS could not succeed because they cannot negate the existence of a reasonable excuse to prevent a finding of contempt. In *AHS v Street Church*, 2021 ABQB 489, I discuss the Alberta Court of Appeal's interpretation on "reasonable excuse." While the applicant must disprove it, and the respondent is not obliged to prove the existence of a reasonable excuse, some factual situations create a presumption in favour of the applicant that there can be no reasonable excuse. That is the case here – there is no reasonable excuse that exists on the facts that requires response from AHS.

E. Conclusion

[54] My conclusion anchors upon the common-sense reality that the Respondents breached the Rooke Order. I have found beyond a reasonable doubt that they both received effective service of the Order and also had actual knowledge of it. Despite this, they persisted in a public and defiant manner in disobeying the Rooke Order. The three essential elements of the test for contempt have been established beyond a reasonable doubt. Both Pastor Artur Pawlowski and Dawid Pawlowski were in contempt of the May 6, 2021 Order of Associate Chief Justice Rooke, when they participated in and attended an illegal public gathering (their church service) in Calgary on the morning of May 8, 2021.

[55] A future date will be set for the sanction phase of this case.

Heard on the 26th day of May, 2021.

Dated at the City of Calgary, Alberta this 28th day of June, 2021.

A.W. Germain
J.C.Q.B.A.

Appearances:

John Siddons, Alberta Health Services
for the Applicant

S. Miller, JSS Barristers for the Respondents

Canadian National Railway Company v. Plain et al.[Indexed as: Canadian National Railway Co. v. Plain]

Ontario Reports

Ontario Superior Court of Justice,

D.M. Brown J.

December 27, 2012

114 O.R. (3d) 27 | 2012 ONSC 7356

Case Summary

Injunctions — Interim injunction — Aboriginal protestors blockading plaintiff's spur line to protest actions of federal government — Plaintiff obtaining ex parte interim injunction against protestors — Blockade continuing — Plaintiff having strong case that protestors were trespassing on its property — Blockade causing irreparable harm to plaintiff, its customers and local economy — Local police refusing to enforce injunction in interest of maintaining goodwill of aboriginal community and in hope that peaceful solution could be found — Plaintiff granted order continuing injunction — Unwillingness of local police to enforce injunction not factor in balance of convenience analysis.

Aboriginal protestors were blockading the plaintiffs St. Clair Industrial Spur Line to protest certain actions of the federal government. The plaintiff applied successfully for an ex parte interim injunction against the protestors. The blockade continued. The local police force refused to enforce the injunction in the interest of maintaining the goodwill of the aboriginal community and in hope that a peaceful solution could be found. The plaintiff brought a motion for a continuation of the injunction. It also asked the court to set a date for a motion for a contempt order against one of the protestors, and to reschedule a motion for an order requiring the chief of police to explain the steps the police had taken to enforce the order.

Held, the motion to continue the injunction should be granted.

The plaintiff had a very strong case that the protestors were trespassing on its property. There was no aboriginal claim to that property. The protestors were simply using the property as the site of a political protest aimed at others. The blockade had caused, and would continue to cause, irreparable harm to the plaintiffs, its customers and the local community. The balance of convenience favoured the plaintiff. The unwillingness of the local police to enforce the injunction was not a factor for consideration in the balance of convenience analysis.

A motion for contempt against a protestor should not be scheduled in the absence of any confidence that the police would provide the court with the assistance it required in order to enforce its orders. The motion for requiring the chief of police to appear and explain what steps had been taken to enforce the [page28] injunction should not be rescheduled, as the position of the police had already been made clear.

Cases referred to

Canadian National Railway Co. v. Plain, [2012] O.J. No. 6272, 2012 ONSC 7348 (S.C.J.); Frontenac Ventures Corp. v. Ardoch Algonquin First Nation (2008), 91 O.R. (3d) 1, [2008] O.J. No. 2651, 2008 ONCA 534, [2008] 3 C.N.L.R. 119, 239 O.A.C. 257, 295 D.L.R. (4th) 108, 56 C.P.C. (6th) 237, 168 A.C.W.S. (3d) 301; Henco Industries Ltd. v. Haudenosaunee Six Nations Confederacy Council (2006), 82 O.R. (3d) 721, [2006] O.J. No. 4790, 277 D.L.R. (4th) 274, 31 C.P.C. (6th) 11, 36 C.P.C. (6th) 199, 240 O.A.C. 119, 154 A.C.W.S. (3d) 183, 73 W.C.B. (2d) 469 (C.A.); Nelles v. Ontario, [1989] 2 S.C.R. 170, [1989] S.C.J. No. 86, 60 D.L.R. (4th) 609, 98 N.R. 321, J.E. 89-1206, 35 O.A.C. 161, 41 Admin. L.R. 1, 49 C.C.L.T. 217, 37 C.P.C. (2d) 1, 71 C.R. (3d) 358, 42 C.R.R. 1, 16 A.C.W.S. (3d) 318

Statutes referred to

Criminal Code, R.S.C. 1985, c. C-46 [as am.]

Trespass to Property Act, R.S.O. 1990, c. T.21, ss. 2, 5(1), 9(1)

Rules and regulations referred to

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rule 13.1

MOTION to continue an interim injunction.

C. Bredt and H. Pessione, for plaintiff.

T. Carsten, for Entropex Inc.

D.M. BROWN J.

I. Request to Continue an Injunction Restraining a First Nations Blockade of CNR's Sarnia Spur Line

[1] On December 21, 2012, at the request of the plaintiff, Canadian National Railway Company, I granted an ex parte interim injunction against protestors who had blockaded the plaintiff's St. Clair Industrial Spur Line (the "injunction order"). In my reasons [[2012] O.J. No. 6272, 2012 ONSC 7348 (S.C.J.)] of last Friday (the "injunction reasons"), I wrote [at paras. 21-24]:

I am satisfied that CN has demonstrated a serious issue to be tried. The protestors are trespassing on CN's Spur Line and are blocking rail traffic. During oral argument counsel showed me a photograph of the blockade of the rail line by a truck with a snow-plough which appeared today in the Sarnia Observer. The trespass and obstruction were obvious.

I am also satisfied that CN has demonstrated that it will suffer irreparable harm if an injunction were not granted. Mr. Curtis described the important role played by the Spur Line in servicing local industries and the economic disruption a continued blockade would have. Such widespread economic harm to industries in an area constitutes harm of an irreparable nature. [page29]

Turning to the balance of convenience, again CN has demonstrated that unless an injunction restraining the blockade is granted, its operations will be significantly disrupted and third parties will

suffer economic harm. The protestors obviously are engaged in a form of expressive activity, but according to the information learned by Mr. Curtis, the protestors do not have a complaint against CN, the property owner; their ire is directed toward the federal Parliament which passed legislation to which they object. Persons are free to engage in political protest of that public nature, but the law does not permit them to do so by engaging in civil disobedience through trespassing on the private property of others, such as CN. Given the alternative locations for expressive conduct open to the protestors, and the economic disruption their expressive activity most probably will have on other industries, the political nature of the message expressed by the protestors carries little weight in the balance of convenience analysis in the particular circumstances of this case.

Moreover, from the information learned by Mr. Curtis, the protest does not involve a claim to aboriginal title or aboriginal rights in connection with the property upon which the protest is taking place. The protest is more in the nature of an expression of opposition by one group of Canadian citizens to legislation which they oppose. As a result, the factors identified by the Court of Appeal in the Haudenosaunee Six Nations Confederacy Council play little role in the circumstances of this case.¹

[2] CN moved today for a continuation of the injunction order until such time as it was varied or discharged by further order of this court. Entropex Inc., a CN customer which relies on the spur line for the operations of its Sarnia plant, supported CN's request for a continuation order.

[3] In addition, CN asked that I set dates for two motions: (i) a motion returnable tomorrow in which CN will seek a contempt order against Mr. Ron Plain, one of the protestors; and (ii) a motion, initially returnable today, in which CN seeks an order against Phil Nelson, the chief of the Sarnia Police Service, requiring him to explain "the steps (if any) the Sarnia Police Service has taken to enforce" the injunction order.

II. Motion to Continue the Injunction Order

[4] Let me deal first with the motion to continue the injunction order.

A. Service

[5] I am satisfied from the affidavits of service filed by CN that the motion materials, injunction order and reasons were served by e-mail on Chief Chris Plain at 12:40 p.m. on Saturday, December 22, 2012. I am satisfied that reasonable efforts were [page30]made by CN to serve the head office of the Aamjiwnaag Chippewas of Sarnia First Nations Band on December 22 and 24, 2012. The office was locked; the court papers, including the injunction order and reasons, were taped to the door. Finally, I reviewed the DVD marked as an exhibit at the hearing which recorded service of the order on Saturday, December 22 at around 9:10 a.m. on the two male protestors who were blocking the spur line (the "service video"). Neither gave his name.

[6] I am also satisfied that proper service of the motion against the Sarnia Police was given by CN on December 24, 2012. Although the Sarnia Police did not see fit to send counsel or any representative to the hearing today, although properly served, yesterday its counsel sent a letter to CN's lawyer. I will consider that letter below.

B. Response of the defendant protestors

[7] Although proper service has been made on Chief Plain, the band and two of the protestors, and although on the service video the protestors told the process server to deal with Chief Plain and the band's lawyer, no representative of the band or protestors appeared today in court. I conclude that they have made a deliberate decision not to attend this court proceeding.

C. The continuation of the blockade and its impact

[8] In support of its motion to continue the injunction order, CN filed a further affidavit from Greg Curtis, sworn December 24, 2012. As of the early afternoon on December 23, over 1,000 rail cars were backed up as a result of the blockade. Mr. Curtis also deposed that

- (i) one of CN's major petrochemical customers has advised that this rail service is essential to ensure their customers, in particular those in rural areas, have propane supplied reliably and rateably for home heating;
- (ii) another major Canadian petrochemical and plastics company customer has advised that the rail blockade is jeopardizing their operations and has halted the inflow of some key raw materials and outbound finished products for customers and an extended blockade would force their operating plants which employ over a thousand people in the region to shut down within a week;
- (iii) customers are assessing the risk of imminent shut-downs due to disruption in the supply chain; and [page31]
- (iv) propane, produced in large quantities in Sarnia, is used to heat homes in Eastern Canada and the propane industry is heavily dependent on rail, particularly in the heating season, as a means to transport the propane to market for distribution to local propane delivery companies.

The blockade has continued uninterrupted up until today.

[9] From the evidence placed before me on this motion, a photograph which appeared in the December 21 edition of the Sarnia Observer showed that the blockade consisted of a pickup truck with a front-end snowplow parked on the rail lines, together with less than a dozen people blocking the line. A few lawn chairs, an oil can and a canopy placed over the spur line could also be seen.

[10] When Mr. Doran, a process server, attended the blockade last Saturday morning, there were only two protestors, a bench and a few chairs blocking the spur line.

[11] Mr. Devlin, CN's manager of aboriginal affairs, went to the blockade site on the morning of December 23. About 50 people were present.

[12] CN Police Inspector Currier attended the site on the evening of December 23 where he observed about a dozen people, a burn barrel and fire, about eight or nine vehicles, a tent, a travel trailer, signage on the railway safety crossing signals, with the burn barrel and most of the people on the tracks.

[13] When Mr. Devlin went back to the site on December 24, he encountered about six to eight people, including one who identified himself as Ron Plain. At that time, Mr. Devlin read out a December 24 letter from Olivier Chouc, the vice-president, law, at CN, informing the protestors of the continuing damage caused by their blockage and concluding:

Notice is hereby given to every recipient of this letter that CN will seek to recover from any individual participating in these illegal activities, any and all damages it incurs as a result of the disruption of its operations.

[14] According to Mr. Devlin, as of today the protesters have placed a large storage container on the spur line.

[15] Mr. Keith Bechard, the president of Entropex, a CN customer, filed an affidavit and testified at today's hearing. Entropex has 130 employees and runs a 24/7 operation at its Sarnia plastic recovery

facility. Over 70 municipalities in Ontario, Quebec, Michigan, Ohio and New York rely on Entropex to process their curbside blue-box plastics. Material delivered by truck to the Entropex facility is processed into pure resin which is shipped by bulk rail transport. Approximately 30 per cent of Entropex's resin, by volume, is shipped to its clients by rail on [page32]the spur line. Delivery to customers of resin is done on a "just in time" basis. Entropex has been unable to find alternatives to shipping its resin on the spur line so that it can meet its contractual obligations to its customers.

[16] Mr. Bechard deposed that unless Entropex can ship resin to its rail clients via the spur line, he believed Entropex would cease its Sarnia operations -- both the receipt of blue-bin plastics and the shipment of resin -- by December 31, 2012. If that occurred, Entropex would lay off its 130 employees indefinitely.

[17] In his testimony at the hearing, Mr. Devlin stated that the reasons given by the protesters he had spoken to for the blockade had nothing to do with CN or any land right issues concerning the spur line, but concerned protester disapproval of federal legislation (Bill C-45), support for a hunger strike presently being carried on by a Chief Spence on an island in the Ottawa River near Parliament Hill, environmental issues and other issues involving the federal government.

[18] News media reports filed by CN contained similar themes, with a December 23 Canadian Press article reporting:

[The demonstrators] say the blockade of the commercial-rail corridor will continue until Prime Minister Stephen Harper meets with Attiwapiskat Chief Theresa Spence, who is on a hunger strike to bring attention to aboriginal issues.

[19] A Facebook video by one Monica Virtue, entitled "You've Inspired a Nation", filed by CN (Exhibit 6), recorded activities by the protesters and contained the statement that "the blockade organizers want a meeting between Canada's Prime Minister Stephen Harper and Chief Spence". One of the demonstrators filmed on the video stated that he wanted an acknowledgment that the CN tracks were there illegally. He also stated that CN could file all the injunctions they wanted, but they could not remove the protesters "from our own territory". The speaker also suggested that the injunction order named the wrong crossing, and that the blockade was actually taking place at another crossing. That said, the video left no doubt that the protesters were blocking the spur line.

D. Evidence regarding the steps taken by the Sarnia Police to enforce the injunction order

[20] Several pieces of evidence were put before me regarding CN's efforts to engage the Sarnia Police in enforcing the injunction order. First, from Mr. Curtis' affidavit of December 24, 2012 the following evidence emerged: [page33]

- (i) the injunction order and reasons were in the hands of the Sarnia Police within two hours of their making -- i.e., by 12:30 a.m. Saturday morning, December 22;
- (ii) at 6:50 a.m. Saturday morning, S/Sgt Beni of the Sarnia Police told CN Police Inspector Currier that the Sarnia Police would not assist in serving the order and reasons and would not be on the scene when service was made;
- (iii) in subsequent meetings with the Sarnia Police, Inspector Currier was told by Sarnia Police Chief Phil Nelson that he "would look at all the issues and attempt to resolve this issue in a peaceful manner before considering a more aggressive approach";
- (iv) CN Inspector Currier observed a number of limited initiatives undertaken by the Sarnia Police to reach out to people assisting in the blockade including "unsuccessful attempts to reach

Chief Chris Plain, a meeting with the Aamjiwnaag Chippewas of Sarnia First Nations Band council, utilizing Band Councilor Anrol Grey to meet and talk to the protesters at the blockade, and involving Sarnia Mayor Mike Bradley";

- (v) a Sarnia Police Inspector told Inspector Currier that "their regular members have been directed not to attend at the blockade and only supervisory officers are allowed to attend the blockade";
- (vi) when Inspector Currier told the Sarnia Police he planned to go the blockade site on the evening of December 23, the Sarnia Police "advised they would not accompany them to the blockade, but did provide a police radio";
- (vii) CN Chief of Police Stephen Covey has had a number of conversations with Sarnia Police Chief Nelson in which

Chief Nelson indicated he wanted to negotiate a peaceful resolution and made several such attempts that have failed, and when asked after those failed attempts as to what the Sarnia police would do to enforce the Order, Chief Nelson indicated that he would continue to use negotiations but thought it would only resolve if the federal government got involved.

[21] Second, as mentioned, no representative of the Sarnia Police saw fit to appear in court today, notwithstanding service of CN's motion on Sarnia Police Deputy Chief Bob Farlow on December 24 at 4:26 p.m. I must confess that I am shocked by such disrespect shown to this court by the Sarnia Police. [page34]

[22] Instead of sending a representative to the hearing today, the Sarnia Police had their counsel, Glen S. Donald, write yesterday to CN's counsel. Here is the text of that letter in full:

I am counsel for the Sarnia Police Service [the "Service"] as it relates to the order of Justice Brown of the Superior Court of Justice dated December 21, 2012 [the "Order"]. Further to our telephone conversation of today's date, this letter, rather than an affidavit, will serve to provide you with the information related to your court appearance tomorrow at 10:00 a.m.

The Service is tasked with balancing various, and sometimes disparate, community interests. It has the overarching responsibility of protecting the peace and the public it serves; an objective which forces the Service to balance the immediate with both the short and long-term. At present, the Service remains active with other members of the community, both political and industrial, in its search for a negotiated solution to this situation. No doubt that you appreciate that the Service (and its officers), on a daily basis, is tasked with the arduous challenge of policing in a jurisdiction where respect for aboriginal interests and issues must be reconciled with "the rule of law". Today, the citizenry of Sarnia has been very well served by this progressive and forward thinking approach.

The Service has read and reviewed the Order and believes it imperative that it maintain its discretion when it comes to the enforcement of same. For the time being, and while efforts are being made to find a peaceful solution to this situation through an amalgamation of community partners, the Service is of the view that a more pro-active approach, by the police, would be detrimental not only to the interests of CN Rail and the industrial area affected by the blockage, but also to the safety of the community at large.

A more rigid application of the rule of law would also undo much of the goodwill that the Service has created with the aboriginal members of the community that it serves. The Service believes that maintaining its discretion is imperative to the proper policing of this jurisdiction and thus to the safety of the public at large.

My client has reviewed the affidavit materials filed in support of your Motion. Certainly you appreciate that Sarnia Police Services shares the jurisdiction relevant to this application with both the CN Police and the RCMP. We trust that, consistent with your obligation to make full and frank disclosure, you will not allow his Honour to labour under the misapprehension that my client has "exclusive authority" over the jurisdiction wherein lies the blockade.

Subsequent to our conversation, my client has advised, that CN re-commissioned a transfer switch which will serve to provide limited rail service to the area impacted by the blockage. The Service obtained this information because it remains in close communication with the industries which normally have a rail service through the area of the blockade. As such the Service has a strong factual understanding of the actual/true immediate impact of the blockade.

We trust that you will edify the Judge as to this change in circumstances.

Hopefully, CN ingenuity will continue to provide the Service and the community in Sarnia with the opportunity of finding a peaceful solution to the rail blockade. [page35]

I trust that the above is of assistance. Please feel free to provide a copy of this letter to the Court tomorrow morning.

[23] At the hearing, counsel for CN advised that the transfer switch referred to by Mr. Donald has allowed CN to move around and park rail cars stuck behind the blockade, but it does not enable the re-routing of rail cars around the blockade.

[24] As to Mr. Donald's suggestion that responsibility for the enforcement of the injunction order is shared with other police services, statements by Sarnia Mayor Mike Bradley reported in media articles filed by CN contained no suggestion that any police force other than the Sarnia Police was responsible for enforcing the injunction order.

[25] CN filed a YouTube video entitled "Sarnia Police Officer drumming at the Aamjiwnaang First Nation Blockade Dec. 26, 2012" (Exhibit 6). The video showed a uniformed, three-chevrons Sarnia Police officer participating in a circle of drummers. Given the clothing worn by the drummers, the event obviously took place outdoors, but I was not able to ascertain the location of the event from the footage itself.

III. Analysis

[26] Dealing first with CN's motion to continue the injunction order, the evidence leaves no doubt that CN has a very strong case that the defendant protesters are trespassing on its property and preventing CN from using that property as it has been for many decades. Mr. Devlin testified that CN owns the fee simple under the spur line, although in places, including the blockade site, the spur line is bordered by the reserve lands of the band. Mr. Devlin testified at the hearing that CN has not received any notice from the band disputing CN's title to the spur line or its continued use of the spur line. Based on the evidence filed before me, I find that the demonstrators are trespassing on CN property and blocking CN's spur line preventing its ordinary use. The weight of the evidence indicates that the protesters are doing so not to advance any claim in respect of the title to or use of the spur line lands, but as simple political protest directed at others -- the federal government -- and not at CN. The evidence disclosed that the protest has nothing to do with the ownership or use of the spur line; the demonstrators simply have chosen a location which they evidently believe will exert political pressure on various government authorities to deal with them, and CN and its customers are caught in the middle of a fight which purportedly concerns others. [page36]

[27] The evidence filed by CN, and its customer, Entropex, disclosed that the unlawful blockade has caused, and will continue to cause, irreparable harm to CN, to its customers who rely on the spur line, to their employees, to their own customers and to the local economy.

[28] That then leaves for consideration the balance of convenience. In the ordinary case, the balance of convenience overwhelmingly would favour CN and the continuation of the injunction order. This is not an ordinary case. That is so because the protesters represent themselves as members of a First Nation, and I have no reason to doubt their representations in that regard. Two issues flow from that factor.

[29] First, as I mentioned in my injunction reasons, our Court of Appeal has spoken twice in recent years on the approach which courts must take when faced with a private landowner seeking an injunction against aboriginal protesters. In the Caledonia case, *Henco Industries Ltd. v. Haudenosaunee Six Nations Confederacy Council*,² the Court of Appeal stated [at paras. 141-43]:

But the rule of law has many dimensions, or in the words of the Supreme Court of Canada is "highly textured". See *Reference re Resolution to Amend the Constitution*, *supra*, at p. 805 S.C.R. One dimension is certainly that focused on by the motions judge: the court's exercise of its contempt power to vindicate the court's authority and ultimately to uphold the rule of law. The rule of law requires a justice system that can ensure orders of the court are enforced and the process of the court is respected.

Other dimensions of the rule of law, however, have a significant role in this dispute. These other dimensions include respect for minority rights, reconciliation of Aboriginal and non-Aboriginal interests through negotiations, fair procedural safeguards for those subject to criminal proceedings, respect for Crown and police discretion, respect for the separation of the executive, legislative and judicial branches of government and respect for Crown property rights.

It seems to me that in focusing on vindicating the court's authority through the use of the contempt power, the motions judge did not adequately consider these other important dimensions of the rule of law.

[30] Two years later, in *Frontenac Ventures Corp. v. Ardoch Algonquin First Nation*,³ the Court of Appeal elaborated on their *Henco Industries* decision as follows [at paras. 42-48]:

I fully accept and agree that compliance with court orders is an important, but not exclusive, component of the rule of law. The motion judge in his [page 37] sentencing decision did not address the other dimensions of the rule of law referred to in *Henco*. However, I do not think that he erred in focusing at the sentencing stage of contempt proceedings on the dimension of the rule of law that relates to ensuring that orders of the court are enforced. The following passage from McLachlin J.'s reasons in *United Nurses of Alberta*, at p. 931 S.C.R., supports this view:

Both civil and criminal contempt of court rest on the power of the court to uphold its dignity and process. The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect. To maintain their process and respect, courts since the 12th century have exercised the power to punish for contempt of court. [Emphasis added.]

In my view, the stage at which the comprehensive and nuanced description of the rule of law expressed in *Henco* must be considered is when a court is requested by a private party to grant an injunction and where doing so might have an adverse impact on asserted aboriginal and treaty rights

affirmed in s. 35 of the Constitution Act, 1982. Such cases demand a careful and sensitive balancing of many important interests in assessing whether to grant the requested injunction and on what terms.

In the present case, as in Henco, the competing interests include the asserted aboriginal rights of the Algonquin First Nations, Frontenac's private interest in pursuing its exploration plan in accordance with valid mining claims and agreements, and respect for the Crown property rights of Ontario.

And how are these interests to be effectively balanced? The answer has been clear for almost 20 years in the jurisprudence of the Supreme Court of Canada -- consultation, negotiation, accommodation, and ultimately, reconciliation of aboriginal rights and other important, but at times, conflicting interests: see *R. v. Sparrow*, [1990] 1 S.C.R. 1075; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550; and *Mikisew Cree First Nation v. Canada (Minister of Canada Heritage)*, [2005] 3 S.C.R. 388. The honour of the Crown requires that it act as a committed participant in the undoubtedly complex process of consultation and reconciliation: *Haida Nation*, *Taku River* and *Mikisew Cree*.

Having regard to the clear line of Supreme Court jurisprudence, from *Sparrow* to *Mikisew*, where constitutionally protected aboriginal rights are asserted, injunctions sought by private parties to protect their interests should only be granted where every effort has been made by the court to encourage consultation, negotiation, accommodation and reconciliation among the competing rights and interests. Such is the case even if the affected aboriginal communities choose not to fully participate in the injunction proceedings.

I am quick to point out that in this case, the AAFN did not appeal either the interim or the interlocutory injunctions granted by Thomson J. and Cunningham A.S.C.J.C. It is thus not for this court to address the merits of either order. However, I think it is important to give judicial guidance on the role to be played by the nuanced rule of law described in *Henco* when courts [page38] are asked to grant injunctions, the violation of which will result in aboriginal protestors facing civil or criminal contempt proceedings.

Where a requested injunction is intended to create "a protest-free zone" for contentious private activity that affects asserted aboriginal or treaty rights, the court must be very careful to ensure that, in the context of the dispute before it, the Crown has fully and faithfully discharged its duty to consult with the affected First Nations: see Julia E. Lawn, "The John Doe Injunction in Mass Protest Cases" (1998) 56 U.T. Fac. L. Rev. 101. The court must further be satisfied that every effort has been exhausted to obtain a negotiated or legislated solution to the dispute before it. Good faith on both sides is required in this process: *Haida Nation*, p. 532.

[31] Having considered the additional evidence filed before me on this continuation motion, I remain of the view, expressed in my injunction reasons, that the blockade of the spur line undertaken by the protesters does not involve a claim to aboriginal title or aboriginal rights connected with the spur line. Instead, the protesters simply have chosen the spur line as a convenient place at which to exert political pressure on various governments based upon their displeasure with recent federal legislation and in support of a protest ongoing in Ottawa by Chief Spence. Simply put, they have chosen the spur line crossing as their Hyde Park and intend to express their views from that location regardless of the harm caused to those who use and rely on the spur line. For this reason, I would not regard the aboriginal identity of the protesters or their message as immunizing them from the standard balance of convenience analysis on a continuation motion.

[32] However, a second factor weighs heavily in the balance of convenience analysis -- the unwillingness of the Sarnia Police to enforce the injunction order in order to remove the obstructions of the spur line to enable CN to resume normal operations.

[33] Under our system of government, citizens have ceded the use of force to public, government agencies, save in limited circumstances. The use of force to deal with domestic disturbances, such as that taking place at the spur line blockade, has been ceded to police forces which operate under civilian government control; under the Criminal Code, R.S.C. 1985, c. C-46 the power of an individual to use force to stop a domestic breach of the law is quite limited. Looking outward rather than inward, Canadian citizens have ceded the use of force to our armed forces to protect our boundaries and to intervene in foreign disturbances. This is the political governance system within which courts operate.

[34] Canadian courts adjudicate claims alleging the violation of legal rights, and our courts pronounce or declare legal remedies. [page39]But courts lack the power to enforce that which they declare. In a real where-the-rubber-meets-the-road sense, our courts are powerless. Our effectiveness and our legitimacy lie in the hands of the political branches of government which possess the monopoly over the public instruments of force.

[35] Where a court orders the cessation of unlawful conduct and calls on the assistance of police agencies to achieve that result, including through the use of force to arrest transgressors and remove obstructions, the court recognizes that the police must retain, to a degree, a tactical discretion to choose the time and manner of enforcement. Paragraph 3 of my injunction order recognized the tactical discretion the police, of necessity, must possess in deciding when and how to enforce the injunction order:

3. THIS COURT ORDERS that any police service or peace officer be and hereby is authorized to arrest, or arrest and remove, any person who has knowledge of this Order and who the police service or peace officer has reasonable and probable grounds to believe is contravening or has contravened the provisions of this Order, and for greater certainty, such a police service or peace officer retains his or her discretion to decide whether to arrest or remove any person pursuant to this Order.

The on-the-ground practical realities of any domestic breach of the peace or public protest by way of trespass require such a division of labour as between courts and the police.

[36] However, such discretion of the police is circumscribed in a very important way -- the judicial decision that certain misconduct must end must be brought about in a timely way by the police. As stated in para. 2 of the injunction order:

2. THIS COURT ORDERS that the Defendants and each of them, and any and all persons having knowledge of this Order, forthwith remove any and all obstructions placed or created or imposed by them to the Plaintiff's full use of its lands, premises, facilities and equipment on the Spur Line.

[37] Consequently, the discretion of the Sarnia Police about when and how barriers blocking the spur line were to be removed had to be exercised within the plain and obvious direction to the transgressors to remove the blockade "forthwith". It was not open to the Sarnia Police to interpret the injunction order as permitting the blockade to remain indefinitely. Such an interpretation would make no sense in the face of the plain language of the order. Yet, six days after making the injunction order, the blockade remains in place and the evidence indicates that the Sarnia Police have taken no active steps to enforce the order -- "forthwith" passed by many days ago. [page40]

[38] With all due respect to the Sarnia Police, local police agencies cannot ignore judicial orders under the guise of contemplating how best to use their tactical discretion. Such an approach would have the practical effect of neutering court orders. It is not the purpose of a court order simply to initiate talks or consultations between the police and those whom the court has found to have breached the law. A court order is not one amongst several chips to be played in an ongoing contest between the police and transgressors of legal rights. On the contrary, a court order is intended to initiate the process of bringing unlawful conduct to an end in a short period of time so that the harm which the court has found to be irreparable is brought to an end.

[39] I granted an interim injunction six days ago. The conduct which I found to be unlawful still continues. It is causing irreparable harm. Notwithstanding the tactical discretion which I granted to the police in the injunction order, the passage of six days, when coupled with the evidence set out above regarding the approach the Sarnia Police have taken, strongly suggests that at this point of time the Sarnia Police do not intend to enforce the injunction order. Put another way, it appears the Sarnia Police are looking for some way to resolve the public misconduct of the protesters other than by enforcing the injunction order.

[40] If civilian authorities have decided that civil disobedience by particular groups, or involving particular political messages, should not be ended by the use of force, such as the arrest of the transgressors and the removal of blockades, then that is a political decision made by civilian authorities, for which the civilian authorities are accountable to the citizenry at large. But, if those upon whom the courts rely to enforce the law have decided, in effect, that the writ of the courts does not run against particular groups or particular political messages, and that disputes involving such groups or messages should be determined in accordance with the respective strengths of the protagonists' political wills, then I do not see how courts can involve themselves productively in such situations. Courts do not engage in contests of political wills. Under our constitutional system, courts are to remain outside such contests of political wills.

[41] Courts examine facts in the light of applicable laws and adjudicate legal rights. If a legal right has been breached, courts may grant a remedy. An injunction to require those who are breaking the law and infringing legal rights to stop such conduct is one such remedy. As a judge, I make an order expecting it will [page41]be obeyed or enforced. If it will not be enforced, why should I make the order? An order which will not be enforced is simply a piece of paper with meaningless words typed on it, and making a meaningless order only undermines the authority and concomitant legitimacy of the courts.

[42] Where persons are trespassing on private or public property, such as the protestors who in this case are blocking CN's spur line, resort to the courts to obtain an injunction is not the only avenue open to the property owner or occupier to secure the arrest of the transgressors. A statutory remedy exists under the Trespass to Property Act, R.S.O. 1990, c. T.21. Section 2 provides:

- 2(1) Every person who is not acting under a right or authority conferred by law and who,
- (a) without the express permission of the occupier, the proof of which rests on the defendant,
 - (i) enters on premises when entry is prohibited under this Act, or
 - (ii) engages in an activity on premises when the activity is prohibited under this Act; or
 - (b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,
- is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

That Act provides for a variety of means by which to give notice to trespassers:

5(1)A notice under this Act may be given,

- (a) orally or in writing;
- (b) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies; or
- (c) by means of the marking system set out in section 7.

The Act specifically confers powers on police officers to arrest trespassers:

9(1) A police officer, or the occupier of premises, or a person authorized by the occupier may arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises in contravention of section 2.

[43] If, in the case of particular groups of protesters or particular types of protests, police agencies are not prepared to act with reasonable dispatch to enforce a court order, then perhaps the time has come for motions courts to exercise their discretion by [page42]declining to grant injunctions, even in cases such as the present one where private legal rights clearly have been violated and continue to be violated in a manner which is causing irreparable harm. In *Nelles v. Ontario*, Lamer J. stated that,

[w]hen a person can demonstrate that one of his Charter rights has been infringed, access to a court of competent jurisdiction to seek a remedy is essential for the vindication of a constitutional wrong. To create a right without a remedy is antithetical to one of the purposes of the Charter which surely is to allow courts to fashion remedies when constitutional infringements occur.⁴

A similar approach is taken by the common law -- where there is a legal right which has been violated, the courts will strive to find a remedy. However, where the police do not enforce court orders in a timely fashion, that one-time axiom of the law may no longer hold true. Or, at least, there may not exist a practical legal remedy to the violation of legal rights in the particular circumstances. That would not be a healthy situation. It would leave the person whose rights have been transgressed only with a political remedy, trying to persuade those who control the agencies of public force to come to its protection. That would then leave us with a government of men, not a government of laws, but such is the result if those charged with enforcing court orders do not do so.

[44] On the evidence before me, I have little confidence that the present approach undertaken by the Sarnia Police will result in the enforcement of the injunction order, as worded, and the removal of the current blockade. However, I cannot bring myself to decline to grant the continuation order sought by a plaintiff whose legal rights are being infringed and where the conduct of the protesters is causing irreparable harm to the plaintiff and others who rely on the spur line, even where the court has no practical means to enforce the order in the circumstances. Consequently, I will continue my injunction order, until such time as it is varied or discharged by further order of this court, but I vary para. 3 of the injunction order so as to remove the last phrase. Section 3 of the amended injunction order will now read as follows:

3. THIS COURT ORDERS that any police service or peace officer be and hereby is authorized to arrest, or arrest and remove, any person who has knowledge of this Order and who the police service or peace officer has reasonable and probable grounds to believe is contravening or has contravened the provisions of this Order. [page43]

[45] I will not schedule the motion for contempt CN wishes to bring against Ron Plain. For the contempt process to achieve any practical result in the context of a public demonstration, such as the present one, requires the assistance of the local police. Based on the evidence presently before me, I have little confidence that at the present time the Sarnia Police will provide this court with the assistance it requires in order to enforce its orders.

[46] Nor will I reschedule CN's motion requiring the Sarnia chief of police to appear in court to explain what steps the service has taken to enforce the injunction order. Mr. Donald's letter purported to provide that information; the position of the Sarnia Police, at this particular point of time, seems quite clear -- they will not enforce the injunction order requiring the removal of the blockade of the spur line.

[47] However, my decision today concerning those two motions is without prejudice to CN applying, on very short notice if required, for further relief, coupled with CN requiring the Sarnia Police to give evidence on the return of that motion. It may be that the position of the Sarnia Police will change in the near future.

[48] Such a motion, and indeed any further motion in this proceeding, must be heard in the South-West Region of this court, not the Toronto Region. I appreciate that rule 13.1 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 entitled CN to commence this action in the Toronto Region. But, there exists a very public dimension to this proceeding which points to the South-West Region as the proper venue. Further, if contempt proceedings are brought at some later date, most of the alleged contemnors no doubt will reside in the South-West Region, so that would be the appropriate location for those hearings.

[49] This past Monday, I spoke with the Office of the Regional Senior Justice for the South-West Region. Judges are available in that region over these holidays to hear emergency motions. Counsel should contact the South-West Regional Manager, Ms. Penny Marr, to arrange for any emergency motion. I have provided counsel with Ms. Marr's office and after-hours work cellphone numbers.

Motion granted.

Notes

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- 1 [2012] O.J. No. 6272, 2012 ONSC 7348 (S.C.J.).
 - 2 (2006), 82 O.R. (3d) 721, [2006] O.J. No. 4790 (C.A.).
 - 3 (2008), 91 O.R. (3d) 1, [2008] O.J. No. 2651 (C.A.).
 - 4 [1989] 2 S.C.R. 170, [1989] S.C.J. No. 86, para. 50.

Foxgate Developments Inc. v. Jane Doe

Ontario Judgments

Ontario Superior Court of Justice

R.J. Harper J.

Heard: July 30, 2020.

Judgment: August 21, 2020.

Court File No.: CV-20-32

[2020] O.J. No. 3535 | 2020 ONSC 5038

Between Foxgate Developments Inc., Plaintiff (Applicant), and Jane Doe, John Doe, or any agent or person acting under their instructions, and other persons unknown, and the Corporation of Haldimand County, Defendants (Respondents)

(79 paras.)

Case Summary

Civil Litigation — Civil procedure — Injunctions — Considerations affecting grant — Irreparable injury — Serious issue to be tried or strong prima facie case — Interlocutory or interim injunctions — Prohibitive injunctions — Motions by plaintiff Foxgate Developments Inc. and defendant Corporation of Haldimand County for interim injunctions granted — Foxgate purchased land in County and when through process to obtain approval for development — After development was well underway, protesters entered on to land without permission and caused significant damage — There were no indigenous rights asserted against land and protesters did not oppose development during planning process or appeal approval of development — Protesters were enjoined from entering on land or interfering with development — Protesters were also enjoined from blocking roads or highways — Constitution Act, 1982, s. 35.

Motion by the plaintiff, Foxgate Developments Inc. (Foxgate), for an interim injunction enjoining the defendants from in any way impeding with, interfering with, intimidating or otherwise obstructing access to its land. Motion by the defendant, Corporation of Haldimand County (County), for an interim injunction requiring the individual defendants to remove any barricades or other obstructions from roads and highways. Foxgate acquired title to land, and other than notices of hydro and gas rights of way, there were no claims registered on title to the land. The Six Nations of the Grand River and the Mississaugas of New Credit (Six Nations) were notified of Foxgate's proposed development of the land. Foxgate obtained all necessary approvals to develop the land, and no one gave any notice that there was any potential or existing land claim by any indigenous community. Service contractors began working on the land. Approximately 12 people attended on the land without permission and proceeded to cause significant damage to the heavy equipment of the service contractors. On July 30, 2020 an interim injunction was granted in favor of Foxgate that, among other things, required all persons not authorized by Foxgate to be on the land to vacate. The injunction also prohibited anyone from interfering with the development on the

land. The injunction was made returnable on August 7, 2020 to allow any interested parties to make representations. Only Foxgate and the County filed materials.

HELD: Motions granted.

There were no indigenous rights asserted against the land. The so-called "land defenders" did not express any opposition to the processes under the Ontario Planning Act when that process was fully open, with proper notices to all interested persons. They did not appeal when the approvals were given, and they did not attempt to become involved in any archeological investigation. It was only after the residential development was well underway with approximately 176 homes sold and very large sums of money committed and spent by Foxgate and its agents and contractors, that the land defenders resorted to self-help and associated violence. If any representative group within the indigenous community wanted to assert a constitutional right, they must assert it in a manner that was within the accepted process, and they could not sit by and refuse to engage in bona fide consultations and legally accepted processes, or resort to civil and potentially criminal behavior in order to achieve their goals. There were serious and meritorious questions to be tried. Foxgate would suffer irreparable harm that could not be compensated in damages if the injunction was not granted, as its timely development had been stopped by the actions of the land defenders, who had ignored the Court process and orders of the Court. Homes that were sold would be delayed, and many bona fide purchasers and their families' lives would be severely impacted. The reputation of the developers and the development's future success had been put in jeopardy. In addition, residents and businesses in the community were seriously and negatively impacted by the actions of the protestors. Civil and potentially criminal disobedience placed the whole community in peril. Open and flagrant disregard for regular order, laws and orders of the Court could not be condoned or tolerated. Each of the requested injunctions was issued.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982,

Constitution Act, 1982, s. 35

Planning Act, R.S.O. 1990, c. P.13,

Rules of Civil Procedure, R.R.O. 1990, Reg. 194,

Counsel

P. DeMelo, Counsel for the Plaintiff.

ENDORSEMENT

R.J. HARPER J.

Chronology

1 There are two actions and motions for interlocutory injunctions before this court. Although they are separate actions, the factual basis for both are interconnected. The legal considerations are also

substantially connected. As a result, I will deal with both matters in this judgment. However, orders will be issued separately within the distinct actions.

2 The Plaintiff, Foxgate Developments Inc. (herein referred to as Foxgate) brought an application and an ex parte motion within that proceeding. That Court File Number, being: CV-20-32.

3 On July 30, 2020 I granted an interim injunction to Foxgate. The motion for an interlocutory injunction and my interim order were made returnable on August 7, 2020 at 9:30 a.m. by way of a virtual Zoom hearing. This would allow time for the notice of the order and motion to be posted and read publicly. Anyone who wished to respond to the motion would then have an opportunity to notify the parties and the court. An email address to send any notification to the court was contained in the order.

4 On August 6, 2020 the Corporation of Haldimand, named Defendants in the above action as Haldimand County (herein referred to as Haldimand) brought an application, the Court File Number being: CV-2000000032-000. In addition, they also brought an ex parte motion for an injunction to, among other things, prohibit anyone from preventing access and use of public highways and roadways in the Haldimand County catchment area. I made that motion returnable on August 7, 2020 at 9:30 a.m.

5 On the return of the motions, only Foxgate and Haldimand had material before the court. I received the evidence on the Haldimand motion and granted their request for an interim injunction.

6 At the same time, I extended the interim injunction of Foxgate and made it further returnable on August 25, 2020.

7 The following represent my written reasons for granting both interlocutory injunctions. For the purposes of these reasons, I will be referring to the evidence in both motions. As stated above, I find that the body of facts are related to the same series of events and it would be an unnecessary duplication to have to deal with them separately. It should also be pointed out that Foxgate supports the motion of Haldimand and Haldimand supports the motion of Foxgate.

8 On August 7, 2020 no material was filed in response to either motion. No one expressed any intention to defend either the motions or the applications.

9 In addition to the known parties, their counsel and a representative of the media, a number of individuals attended the virtual Zoom hearing on August 7, 2020. They identified themselves as observers.

The Issues

(I) The Foxgate Motion

10 There are two central issues on this motion:

11 First, whether to grant an interlocutory injunction, pending the trial of the action, enjoining the Defendants from in any way impeding with, interfering with, intimidating or otherwise obstructing access

to certain lands owned by Foxgate or its employees or agents, contractors or subcontractors, or their agents, from using these lands, until the trial of this matter or until any further order of this court.

12 Second, the motion further seeks an order requiring the Defendants to cease and desist their unlawful trespass and that any peace officer assist in the execution of the orders sought herein, including the removal of any persons who refuse to obey the provisions of the interlocutory order that may be granted.

(ii) The Haldimand Motion

The Central Issues

13 Whether or not the court should grant an interim/interlocutory order as follows:

- a. Requiring the Individual Respondents to tear down and remove any barricades or other obstructions placed, constructed or maintained by them, on Argyle Street, 6th Line, the Highway 6 bypass and McKenzie Road that may create an obstruction to access to the said roads.
- b. Requiring the Individual Respondents to vacate the blockaded areas on Argyle Street, 6th Line, the Highway 6 bypass and McKenzie Road referenced in the Affidavit of Cathy Case forthwith.
- c. Restraining the Individual Respondents and their servants or agents, whose identity is unknown, or anyone having notice of this Order from blockading, barricading, occupying, controlling or attempting to control access to or passage through, interfering with the use of by any person of, hindering, obstructing or impeding access to, any public highway, street, road or road allowance located in Haldimand, including Argyle Street, 6th Line, the Highway 6 bypass and all roads described in Schedule A ("the Subject Lands").

Background

14 Foxgate is the owner of lands that are municipally known as 1535 McKenzie Road, in the County of Haldimand. The lands are legally described as:

PT LT 3 RANGE WEST OF TOWNSEND TO CALELDONIA ROAD, GEOGRAPHIC
TOWNSHIP OF ONEIDA, NOW HALDIMAN COUNTY, DESIGNATED AS PARTS 1-10
INCL. 18R-6318, S/T EASEMENTS AS IN 06293, HC3242, HC 119162 & HC119163, PIN
38168-0390 (LT) (the "Lands").

15 The Lands were acquired by Foxgate on September 9, 2015. There are two Notice of Claims on the title. They both refer to claims of interest in the Lands by Ontario Hydro and Union Gas that provide access and the right to enjoy and use the Lands specifically identified as utility corridors.

16 After a review of the uncontested affidavit evidence filed by the Foxgate in these proceedings, and filed by Haldimand on August 6, 2020 in their proceedings, I make the following findings of fact:

From 2003 to 2015

17 A different development was being advanced on the same lands. In order to advance this development,

all applications that were required under the *Planning Act*, R.S.O. 1990, c. P.13 and other building, municipal and County by-laws were published and processed. This development, however, did not proceed to completion.

September 9, 2015

18 On September 9, 2015 Foxgate acquired title to the Lands. Other than notices of hydro and gas rights of way, there were no other claims registered on the title to the lands.

From September 9, 2015 to December 16, 2016

19 From the time that Foxgate became the titled owner to the Lands, they pursued all the necessary legal requirements in order to develop the Lands. This process included:

- d. Making an application for zoning by-law amendments and submitted a draft plan of subdivision. This process included:
 - i. Public meetings and requests for comments from any interested parties in accordance with the *Planning Act*.
 - ii. As a result of Haldimand having an agreement with the Six Nations of the Grand River and the Mississaugas of New Credit to notify them of pending developments, they were specifically notified of Foxgate's planned development.
 - iii. Pursuant to the agreement mentioned above, Haldimand circulated the applications, supporting documentation and reports to the Six Nations of the Grand River and the Mississaugas of New Credit.

January 24, 2017

20 All approvals pursuant to the *Planning Act* were obtained by Foxgate following the completion of the public process noted above. No one appealed any of the approvals.

21 A declaration of the Notion of Adoption of the Approval of the Draft Plan of Subdivision was issued on January 24, 2017.

Archeological Investigation

22 Foxgate entered into an agreement with the Six Nations of the Grand River and the Mississaugas of New Credit that allowed them to participate and assist in an archeological investigation of the approved development site. This investigation was completed and there was a finding that there were no areas of concern that would have any impact on the development.

From September 2015 to May 2019

23 No one gave any notice to the developers of Haldimand that there was any potential or existing land claim by any indigenous community.

May 2019

24 In May 2019, Foxgate entered into an agreement titled: "Definitive Agreement" with the Six Nations Elected Counsel ("SNEC") and the Mississaugas of New Credit. This agreement called for the transfer of a parcel of approximately 42 acres of land to the Six Nations of the Grand River. The SNEC was also given the sum of approximately \$325,000 to be held in trust for land development for Six Nations.

From the Fall of 2018 to July 20, 2020

25 Foxgate partners, Losani Homes and Ballantry Homes, started to sell new homes pursuant to the approved plan of subdivision. Any agreements were to have a November 2020 closing date. By July 20, 2020, one hundred and seventy-six (176) agreements of purchase and sale had been entered into.

26 In May 2020, service contractors began working on the Lands to install services including sewers, water, roadways. By July 20, 2020 much of the service contract had been completed. Up until July 20, 2020 there were no complaints or claims against the property or the development to Foxgate, its agents or contractors, or to Haldimand.

July 20, 2020

27 On July 20, 2020, approximately 12 people attended on the Lands. They did not have permission to be on the Lands from Foxgate or any of its agents or contractors. They continued to occupy the Lands and proceeded to cause significant damage to the heavy equipment of the service contractors. They spray bombed some of the heavy equipment, painted the phrase "1492 Land Back Lane" on a large construction container on the Lands and planted Six Nation Flags on the Lands and heavy equipment.

Injunctive Relief

28 On July 30, 2020 I granted an interim injunction in favor of Foxgate that, among other things, required all persons not authorized by the Foxgate its agents and contractors to be on the Lands to vacate the Lands. This interim injunction also prohibited anyone from interfering with the development on the Lands.

29 The seminal case on the test to consider whether to grant an interlocutory injunction is *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385 where at page 334, Sopinka and Cory JJ. summarized the test as follows:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusing of the remedy pending a decision on the merits.

30 For the purposes of considering whether to grant an interlocutory injunction, I am also guided by the often-quoted comments of Justice Robert J. Sharpe in his text, *Injunctions and Specific Performance*,

loose-leaf, revision 28 (Canada Law Book, 2019). With respect to interference with property rights, the text notes at para. 4.610:

Under our system of law, property rights are sacrosanct. For that reason, the rules that generally apply to injunctions do not always apply in cases such as this. The balance of convenience and other matters may have to take second place to the sacrosanctity of property rights in matters of trespass.

31 In the case before me, no person or entity has filed any responding material or otherwise put in an appearance or even expressed a desire to respond or appear. From the media reports that have been filed as exhibits to both Foxgate and Haldimand's materials it appears that those who have been occupying the Lands and obstructing highways and roads in Haldimand County are content to raise any of their concerns in the media as opposed to the court.

32 From the media reports, the protestors refer to themselves as "land defenders". However, the nature of any of their defense to land is to resort to self-help and violence instead of participating in the court process. On both occasions that this matter was in this court, I indicated that anyone who wanted to participate in these proceedings should do so. Otherwise this court can only make decisions on the basis of uncontradicted evidence that is properly placed before it.

33 When this matter was before me on August 7, 2020, I repeated my urging of those who wanted to participate to respond within these proceedings. In addition, I expressed a willingness to consider an order to have this matter case managed by the Regional Senior Justice's office pursuant to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. This would allow for an opportunity for parties to consult and make efforts to settle. No one has come forward in order to participate in this hearing by responding or invoking this rule.

Consultation

34 The matter before me is factually similar to the circumstances that led to the eventual appeal of the injunction granted by Cunningham J. in *Frontenac Ventures Corporation v. Ardoch Algonquin First Nation*, 2008 ONCA 534, 91 O.R. (3d) 1. The Ontario Court of Appeal outlined those factual circumstances as follows at para. 17:

[17] Frontenac first sought an interim injunction against the AAFN and the Shabot to restrain them from interfering with its exploration program. Frontenac's motion was heard on August 23, 2007. The appellants filed no evidence and made no submissions on this motion. Instead, counsel for the appellants attended and advised the court that they had, respectfully, decided not to participate in the injunction proceedings and had written to the Premier of Ontario to propose negotiations to end the dispute. On August 27, 2007, Thomson J. granted the order sought by Frontenac.

35 In this case, no one made submissions on behalf of anyone who was conducting themselves in a manner that interfered with Foxgate's development of the Lands or the unobstructed use of public thoroughfares within Haldimand's jurisdiction.

36 As the proceedings moved toward contempt hearings in *Frontenac*, the parties impacted by the contempt motion and others sought to engage in the court process. The matter was returned to

Cunningham A.C.J.S.C., as he then was. With the prompting of Cunningham A.C.J.S.C. and the involvement of Scott J., the parties entered into a process of mediation.

37 The mediation was not successful. The alleged contemnors were found guilty of contempt and received a sentence. The matter then went to the Court of Appeal.

38 The Ontario Court of Appeal commented on the issue of the rule of law when considering the rights enshrined in s.35 of the *Constitution Act, 1982* at paras 43-46:

[43] In my view, the stage at which the comprehensive and nuanced description of the rule of law expressed in *Henco* must be considered is when a court is requested by a private party to grant an injunction and where doing so might have an adverse impact on asserted aboriginal and treaty rights affirmed in s. 35 of the *Constitution Act, 1982*. Such cases demand a careful and sensitive balancing of many important interests in assessing whether to grant the requested injunction and on what terms.

[44] In the present case, as in *Henco*, the competing interests include the asserted aboriginal rights of the Algonquin First Nations, Frontenac's private interest in pursuing its exploration plan in accordance with valid mining claims and agreements, and respect for the Crown property rights of Ontario.

[45] And how are these interests to be effectively balanced? The answer has been clear for almost 20 years in the jurisprudence of the Supreme Court of Canada - consultation, negotiation, accommodation, and ultimately, reconciliation of aboriginal rights and other important, but at times, conflicting interests: see *R. v. Sparrow*, [1990] 1 S.C.R. 1075; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550; and *Mikisew Cree First Nation v. Canada (Minister of Canada Heritage)*, [2005] 3 S.C.R. 388. The honour of the Crown requires that it act as a committed participant in the undoubtedly complex process of consultation and reconciliation: *Haida Nation*, *Taku River* and *Mikisew Cree*.

[46] Having regard to the clear line of Supreme Court jurisprudence, from *Sparrow* to *Mikisew*, where constitutionally protected aboriginal rights are asserted, injunctions sought by private parties to protect their interests should only be granted where every effort has been made by the court to encourage consultation, negotiation, accommodation and reconciliation among the competing rights and interests. Such is the case even if the affected aboriginal communities choose not to fully participate in the injunction proceedings.

39 In the case before me, there have been no aboriginal rights asserted. The ability to consult and negotiate with those who have not and will not engage the court process is limited.

40 Regarding the duty to consult, the Supreme Court of Canada stated in *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 SCR 227, at paras. 29-30:

[29] The duty to consult is triggered "when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it": *Haida Nation*, at para. 35. The content of the duty varies depending on the context, as it lies on a spectrum of different actions to be taken by the Crown: *Haida Nation*, at para. 43. An important component of the duty to consult is a requirement that good faith be shown by both the

Crown and the Aboriginal people in question: *Haida Nation*, at para. 42. Both parties must take a reasonable and fair approach in their dealings. The duty does not require that an agreement be reached, nor does it give Aboriginal peoples a veto: *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, [2004] 3 S.C.R. 550, at paras. 2 and 22; *Haida Nation*, at para. 48.

[30] The duty to consult exists to protect the collective rights of Aboriginal peoples. For this reason, it is owed to the Aboriginal group that holds the s. 35 rights, which are collective in nature: *Beckman*, at para. 35; Woodward, at p. 5-55. But an Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s. 35 rights: see, e.g., *Komoyue Heritage Society v. British Columbia (Attorney General)*, 2006 BCSC 1517, 55 Admin. L.R. (4th) 236.

41 In *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511, the Supreme Court described the scope of the duty to consult at para. 37:

[37] There is a distinction between knowledge sufficient to trigger a duty to consult and, if appropriate, accommodate, and the content or scope of the duty in a particular case. Knowledge of a credible but unproven claim suffices to trigger a duty to consult and accommodate. The content of the duty, however, varies with the circumstances, as discussed more fully below. A dubious or peripheral claim may attract a mere duty of notice, while a stronger claim may attract more stringent duties. The law is capable of differentiating between tenuous claims, claims possessing a strong *prima facie* case, and established claims. Parties can assess these matters, and if they cannot agree, tribunals and courts can assist. Difficulties associated with the absence of proof and definition of claims are addressed by assigning appropriate content to the duty, not by denying the existence of a duty.

42 In my view, it is not possible to differentiate between tenuous claims, claims possessing a strong *prima facie* case and established claims when those resorting to self-help refuse to engage in the court process. The persons who call themselves the "land defenders" have done nothing since, at least, 2015 when Foxgate became the titled owner to the Lands. Nor is there any evidence that they expressed opposition to the proposed plans submitted between 2003 and 2015.

43 From the time the Foxgate submitted their plans for development of these Lands, the "land defenders" did not express any opposition to the *Planning Act* processes even when this process was fully open with the proper notices to all interested persons. They did not appeal when the necessary approvals were given. They did not engage with the SNEC when that representative body entered into the "Definitive Agreement", nor did they attempt to become involved in the archeological investigation.

44 It was only after this residential development was well underway with approximately 176 homes sold with expectations of closing for those 176 families for November 2020 and very large sums of money had been committed and spent by Foxgate and its agents and contractors did the "land defenders" initiate their resort to self-help and associated violence.

45 The Supreme Court of Canada in *Haida* stated at para. 42:

[42] At all stages, good faith on both sides is required. The common thread on the Crown's part must be "the intention of substantially addressing [Aboriginal] concerns" as they are raised

(*Delgamuukw, supra*, at para. 168), through a meaningful process of consultation. Sharp dealing is not permitted. However, there is no duty to agree; rather, the commitment is to a meaningful process of consultation. As for Aboriginal claimants, they must not frustrate the Crown's reasonable good faith attempts, nor should they take unreasonable positions to thwart government from making decisions or acting in cases where, despite meaningful consultation, agreement is not reached: see *Halfway River First Nation v. British Columbia (Ministry of Forests)*, [1999] 4 C.N.L.R. 1 (B.C.C.A.), at p. 44; *Heiltsuk Tribal Council v. British Columbia (Minister of Sustainable Resource Management)* (2003), 19 B.C.L.R. (4th) 107 (B.C.S.C.). Mere hard bargaining, however, will not offend an Aboriginal people's right to be consulted.

46 If any representative group within the Aboriginal community wants to assert a constitutional right, they must assert it in a manner that is within an accepted process. Resort can be made to the Courts, the Land Claims Tribunal, or direct negotiations with the appropriate level of Government. However, they cannot sit by and refuse to engage in *bona fide* consultations and legally accepted processes. They cannot resort to civil and potentially criminal behavior in order to achieve their goals.

47 In the case of the *City of Hamilton v. Loucks*, 232 D.L.R. (4th) 362 (Ont. S.C.), Henderson J. was dealing with a group of individuals who had effectively shut down the construction of what is known as the Red Hill Expressway. He stated at para 55:

[55] Lastly, the defendants submit that a certain limited amount of civil disobedience is acceptable in our society as civil disobedience has been one of the cornerstones in the advancement of democracy. Again, this is an attractive argument, but one that is doomed to fail. I accept that historically many good causes have been promoted through the use of civil disobedience, but those who have engaged in such conduct have always been subject to the sanctions of the courts as a consequence. Individuals in our society cannot be allowed to engage in unsanctioned unlawful conduct. If that were allowed there would be little need for any of the laws of this country. All of the citizens of our country must be compelled to obey the law.

[56] If there is any doubt about the assertion that our country is governed by the rule of law it is resolved by the preamble to the *Charter* that states "*Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law*". In summary, all of the citizens of Canada are required to obey the law. It is my duty to ensure that each and every person obeys the law. It would be a dereliction of my duty if I were to permit the defendants to shut down the Project by breaking the law, and thereby allow them to circumvent the many assessments and reviews that have been conducted to date.

CIRCUMSTANCES AFTER THE FOXGATE INTERIM INJUNCTION ORDER

48 On August 5, 2020, the OPP caused those occupying the Lands to vacate the Lands pursuant to my interim injunction order of July 30, 2020. Some of the protesters resisted and were arrested.

49 Shortly after this action by the OPP, multiple protestors who were sympathetic to the those occupying the Lands set up blockades on Argyle Street, the main thoroughfare in Caledonia and the Highway 6 bypass of Caledonia.

50 Several other fires were set at or near 6th Line in Caledonia. This included setting an excavator on

fire. When fire fighters arrived and attempted to put that fire out, they were greeted by protestors throwing rocks at them. The fire fighters were forced to leave out of fear for their safety and were unable to put out the fire.

51 Unidentified protestors, who also appeared to be in support of the protestors on the Lands, threw truck tires onto the highway along with construction skids and lit them on fire. They fueled the fire with an accelerant and thick black smoke could be seen billowing from the fire site.

52 The OPP and Haldimand County officials estimated that there were approximately 100 protestors involved.

53 After the above incidents, Haldimand brought their application and request for an interlocutory injunction preventing anyone from blockading any highway or thoroughfare within the catchment area of Haldimand County. I granted the interim injunction and made it returnable at the same *in person hearing* as Foxgate's motion on August 25, 2020 at 10 a.m. at the Superior Court in Brantford.

54 The very next day after the OPP enforced Foxgate's interim injunction and removed the protestors, they returned to the site of the Lands and have occupied them ever since. The protestors continue to blockade Argyle St and Highway 6 in Caledonia.

The Application of the RJR MacDonald Test

55 It is important to point out that the claims of the "land defender"/protestors have not been advanced within these proceedings. In the media reports attached to both the Haldimand action and the Foxgate action, there are numerous references to spokespersons allegedly speaking on behalf of the "land defenders". The assertion in the media reports by the alleged spokespersons is that this is an issue between sovereign nations. They assert, in the media only, that this land was never ceded by the Haudenosaunee. They assert this as a land claim. It is not a land claim.

56 I agree with Turnbull J. in *Ah'she hodeeheehonto v. Bomberry*, 2010 ONSC 3701 when he stated at para 18:

[18] I find that this application has nothing to do with land claims. The ongoing case of *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada and her Majesty in Right of Ontario*, court File Number 406/95, commenced in Brantford deals with a land claim. In that action, the Six Nations elected Council, on behalf of all of Six Nations, is prosecuting a claim against Canada and Ontario for an accounting of the land and money it alleges it should have received from the Haldimand Proclamation of 1784 and which land was removed by so-called "surrender". The application before this court deals with trespassing by the applicant on land in which he has no lawful interest.

57 The case referred to by Turnbull J., *Six Nations of the Grand River Band of Indians v. The Attorney General of Canada*, has been within the Superior Court since 1995. This case involves multiple and complex land claims issues. In or about 2017 the matter was transferred by order of Morawetz R.S.J., as he then was.

58 The case management judge, Sanfilippo J., outlined the procedural history of the land claim action in

Six Nations of the Grand River Band of Indians v. The Attorney General of Canada, et al, 2018 ONSC 1289, at paras 1-2:

[1] This action was initiated by statement of claim issued on March 7, 1995. The plaintiff, Six Nations of the Grand River Band of Indians, alleges that the defendants, Attorney General of Canada ("Canada") and Her Majesty the Queen in Right of Ontario ("Ontario"), or their predecessors, breached fiduciary and treaty obligations alleged to be owed and thereby seeks an accounting, declaratory relief, equitable compensation and references in connection with events that largely took place in the 18th and 19th centuries.

[2] The action was initiated in Brantford, Ontario, and was there subject to case management by Justice J.C. Kent. It was transferred to the Superior Court in Toronto, on consent, pursuant to the Order of Regional Senior Justice Morawetz dated November 24, 2017.

59 Sanfilippo J. then reviewed some of the lengthy history of the matter at paras. 3-8:

[3] On January 3, 2018, a request was made, on consent, for this action to be subject to case management. On January 5, 2018, I was appointed as the case management judge.

[4] The first case management conference was conducted on January 31, 2018 (the "1st CM Conference").

[5] This action had a lengthy period of active litigation, which resulted in the exchange of numerous affidavits of documents and document lists. In the result, the parties collectively produced over 31,000 documents. The discovery representative of Canada was examined for five days in 2000, both preceded by and followed by extensive motions on discovery issues.

[6] This action was placed in abeyance for a period of more than six years, on consent of all parties, but has since been taken out of abeyance and has entered a stage of renewed, active litigation.

[7] The parties agreed to a discovery plan in March 2016 which incorporated a detailed electronic discovery protocol. By continued use of this discovery plan, the parties are currently engaged in discovery and attempting to narrow factual issues in dispute before trial through a process of detailed requests to admit, supplemented by written discovery.

[8] To date, the plaintiff has delivered eleven requests to admit, of which ten have been answered, while Canada has delivered one request to admit, which has been answered. The plaintiff also delivered to Ontario, in April 2017, an instalment of written questions

60 *Six Nations of the Grand River Band of Indians* case involves claims for an accounting and for damages. It does not seek any other interim order to halt any development on lands that may be in the area being disputed in that case. It includes massive amounts of evidence dealing with the extent of the Imperial Crown's duties, liabilities during the periods prior to confederation, and the extent to which the Government of Canada has assumed any of those duties and responsibilities.

61 The case also involves evidence that deals with multiple treaties and documents of surrender of lands even before the 1700s.

62 The above noted cases are cited to show how complicated and cumbersome these cases must be in order to achieve a process that is fair and comprehensive. Having said that, the fundamental goal is to

achieve fairness within the recognized court and administrative law processes. As alluded to earlier, the need to engage in various levels of negotiations with the Federal and Provincial Governments are also avenues that must be explored.

63 Lederer J. is presently dealing with a land claim that asserts title and damages in the case of *CREES (EEYOU ISTCHEE) et al v. Canada (Attorney General) et al*, 2017 ONSC 3729, [2017] 4 C.N.L.R. 47. Even when there are identified parties seeking a land claim, damages, and possibly s. 35 rights, the complexities are monumental. In the case before Lederer J., he outlines some of the challenges at para. 28:

[28] It is a conundrum. Do we start narrow and allow issues to broaden out as we proceed and they become clearer? Should we start wide open and look to put in limits when the issues are more precisely defined? This is a land claim. It speaks to our effort to find reconciliation. In this situation not only is the court being asked to resolve a dispute between First Nations and the Crown but, at the same time to resolve internecine ("mutually destructive") disagreements between First Nations. The problem is not made easier by the failure of the two levels of government which are, after all, the defendants in the action and a main player in our effort to find reconciliation, to make any contribution to how it should be resolved.

64 Regardless of the complexities, when parties resort to the court to assert their claims the court has a duty to ensure its processes are followed, its Orders are obeyed and its processes are fair to everyone.

65 I have also considered the comments of Arrell, J. in *The Corporation of the City of Brantford v. Montour et al*, 2010 ONSC 6253, 104 O.R. (3d) 429. Arrell J. was dealing with a request from The City of Brantford for an interim injunction to prevent work stoppages at specific sites within the City. The Respondents in that case caused work stoppages at a number of projects being developed. By the time the matter came before Justices Arrell, the blockade and stoppages at the development sites were escalating to the point of being a daily occurrence with the real threat of violence.

66 The Respondents, in that case, were principals of what was called the "Haudenosaunee Development Institute" ("HDI"). The Haudenosaunee Confederacy Chiefs had formed the HDI to cause developers to come to them in order to pay fees and make applications for any development in a prescribed area in Brantford. The members of the HDI took the position before Justice Arrell that the lands in question formed part of the Haldimand Tract and were in fact Haudenosaunee lands that were never ceded.

67 In dealing with the issue of the interim injunction, Justice Arrell stated at para. 51:

[51] I am given further comfort that Ms. Holmes has the preferable opinion by the fact that the Six Nations, despite 25-30 years of archival research on their own, have never elected to commence any legal proceedings against any entity, being either private or government, for the return of this land or title to the land. They did commence a lawsuit in 1995, which has been dormant for the last few years, for compensation. As well they have filed 29 land claims with the federal government for compensation.

68 No First Nations group or individual has made a land claim within these proceedings. First Nations groups and individuals cannot simply sit on the sidelines after a lengthy legal process has been initiated to advance a subdivision plan, then obstruct the process by asserting various claims in the media and not the courtroom.

69 In both of the court actions before me there are serious and meritorious questions to be tried.

70 Haldimand in Action # CV-2000000032-00 and Foxgate in Action # CV-20-32 would both suffer irreparable harm that cannot be compensated in damages.

71 Foxgate's timely development of their Lands has been stopped by the actions of the "land defenders"/protestors. They have ignored this court process and ignored the orders of this court. The homes that are sold by the agents and contractors of Foxgate will be delayed and many *bona fide* purchasers and their families' lives will be severely impacted.

72 The reputation of the developers and the development's future success has been put in jeopardy. Prospective buyers will be extremely wary of purchasing homes and moving to a community where apparent lawlessness would put their families at risk. Haldimand is faced with protestors who have placed Caledonia and surrounding areas within Haldimand at risk. The community cannot be assured that by-laws and Provincial legislation that directs an orderly process for developments will apply equally to everyone.

73 The civil and potentially criminal disobedience that is replete in the evidence before me places that whole community in peril. Black burning tire smoke billowing into the air is as much a toxic health risk as it is a toxic emotional and psychological risk to the Haldimand community.

74 Residents and businesses in the Haldimand community are seriously and negatively impacted by the actions of these protestors. People cannot have the regular use and enjoyment of their homes with roads and highways blocked. Their health and safety is in jeopardy when lawless activity is allowed to prevail.

75 People who have businesses in the community are impacted with individuals finding it extremely inconvenient to travel given the blockades and other disruptions. Putting it bluntly, very few people want to go into a community and do business when they have reason to believe that not only would it be inconvenient to do so, but also their own health and safety would be at risk.

76 There is no award of damages that could adequately compensate either Haldimand or Foxgate in the cases before me.

77 Open and flagrant disregard for regular order, laws and orders of this court cannot be condoned or tolerated. If the rule of law is not upheld in the circumstances of this case, chaos, mayhem and anarchy would prevail. This is not the way our Canadian society is. Central to our values is the rule of law. It applies to everyone, without exception.

78 I find that the *RJR-MacDonald* test has been met in both the Haldimand case and the Foxgate case.

79 Each of the requested injunctions shall issue in accordance with the draft order submitted.

R.J. HARPER J.

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MacMillan Bloedel Ltd. v. Simpson

Supreme Court Reports

Supreme Court of Canada

Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

1996: April 22 / 1996: August 22.

File No.: 24437.

[1996] 2 S.C.R. 1048 | [1996] 2 R.C.S. 1048 | [1996] S.C.J. No. 83 | [1996] A.C.S. no 83

Greenpeace Canada and Valerie Langer, appellants; v. MacMillan Bloedel Limited, respondent, and Shiela Simpson, Valerie Langer, Bonnie Glambeck, James Robinson, Gilles Blanchet, Daniel Carbotte, Marie Michajlowycz, Willie Sport, Lisa Humphreys, Dan Lewis, Carl Hinke, Mike Mullins, Chris O'Gorman, Bill Joyce, Heidi Dorosh, Marek Czuma, Tammy Chabot (aka Tammy Kinlock), Daniel Alexander Kirslake, William Robinson Cook, Henry George Adam Trott, John Jared Irwin, John Doe, Jane Doe and Persons Unknown, defendants, and The Attorney General of British Columbia, intervener.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Case Summary

Injunction — Interim injunction — Non-parties — Company granted interim injunction against protesters interfering with its logging operations — Whether courts have jurisdiction to make orders binding on non-parties — If so, whether such orders can be made against persons named only as "John Doe, Jane Doe and Persons Unknown" — Whether appropriate to include in such orders provisions authorizing police to arrest and detain strangers to litigation.

The respondent, which is engaged in logging operations on its properties in the Clayoquot Sound area of Vancouver Island, brought an action in the B.C. Supreme Court in 1991 to restrain the protesters from blocking the roads on which it trucked its logs, seeking damages for trespass, nuisance, intimidation, interference with contractual relations and conspiracy, as well as injunctive relief. The respondent also obtained an ex parte order enjoining "all persons having notice" of the order from impeding its logging operations. In a series of subsequent applications the order was amplified, refined, and extended. In 1993, the respondent was granted an interim injunction -- the order in issue in this appeal -- prohibiting the named defendants, as well as "John Doe, Jane Doe and Persons Unknown" and "all persons having notice of th[e] order" from engaging in conduct which interfered with its operations at specified locations. In particular, the injunction barred members of the public from blocking a bridge and authorized the police to remove offenders. The majority of the Court of Appeal upheld the order, holding that the B.C. Supreme Court, as a court of inherent jurisdiction, had jurisdiction to make orders binding on non-parties and that the use of such power was justified to preserve the respondent's property rights in the face of mass obstruction.

Held: The appeal should be dismissed.

The mere fact that conduct may be characterized as criminal does not deprive a person whose private rights are affected from seeking relief in the civil courts. More specifically, where criminal conduct affects property rights, the person so affected may invoke the equitable jurisdiction of the court to obtain an injunction prohibiting the conduct. Thus the fact that the conduct of blocking the roads can be characterized as criminal does not deprive the British Columbia Supreme Court of the right to grant an injunction against potential offenders in a civil action.

Courts have jurisdiction to make orders binding on persons who are not parties to the action. Such orders are enforceable on the long-standing principle that persons who are not parties to the action, but who violate an order of the court, may be found guilty of contempt for interfering with justice. Since members of the public can be held in contempt for having disobeyed an injunction, they must first be apprised of the existence and terms of the order and be given an opportunity to comply. It is also desirable that the order's terms speak of the duty of non-parties to respect it.

Finally, it is necessary that the orders be carefully worded and constrained to ensure that they are fair and not unduly broad. All these requirements were met in this case.

The use of the expressions "John Doe, Jane Doe and Persons Unknown" in the present action does not invalidate the order. These expressions are surplusage as a person who is not a party to an action is bound to respect an order made in the action on pain of being found in contempt of court. This was the procedure used to enforce the order at issue. Since none of the protesters was charged or sued as a party to the action, it is unnecessary to decide whether, as a matter of pleading, the use of these terms in the style of cause could validly engage members of the public served with the writ.

The provision authorizing the police to arrest and detain persons breaching the injunction does not vitiate the order. The inclusion of police authorization appears to follow the Canadian practice of ensuring that orders which may affect members of the public clearly spell out the consequences of non-compliance.

The fact that the respondent did not pursue the main action against the named defendants is not a basis for invalidating the order. The respondent was entitled to claim other relief allowed by law.

Cases Cited

Referred to: Weber v. Ontario Hydro, [1995] 2 S.C.R. 929; Robinson v. Adams (1924), 56 O.L.R. 217; Gouriet v. Union of Post Office Workers, [1978] A.C. 435; Hurtig v. Reiss, [1937] 3 W.W.R. 549; Boyce v. Paddington Borough Council, [1903] 1 Ch. 109, rev'd [1903] 2 Ch. 556, rev'd [1906] A.C. 1; Marengo v. Daily Sketch and Sunday Graphic, Ltd., [1948] 1 All E.R. 406; Iveson v. Harris (1802), 7 Ves. 251, 32 E.R. 102; Attorney-General v. Times Newspapers Ltd., [1991] 2 W.L.R. 994; In re Supply of Ready Mixed Concrete, [1991] 3 W.L.R. 707; Seaward v. Paterson, [1897] 1 Ch. 545; Bartle & Gibson Co. v. Retail, Wholesale and Department Store Union, Local 580, [1971] 2 W.W.R. 449; International Longshoremen's Association, Local 273 v. Maritime Employers' Association, [1979] 1 S.C.R. 120; Attorney General v. Newspaper Publishing plc, [1987] 3 All E.R. 276; Sandwich West (Township) v. Bubu Estates Ltd. (1986), 30 D.L.R. (4th) 477; Ontario Hydro v. Johnson (1985), 1 C.P.C. (2d) 234; Morgentaler v. Wiche, [1989] O.J. No. 2582 (QL); Ontario (Attorney General) v. Dieleman (1994), 20 O.R. (3d) 229; Griffin Steel Foundries Ltd. v. Canadian Association of Industrial, Mechanical and Allied

Workers (1977), 80 D.L.R. (3d) 634; Montres Rolex S.A. v. Balshin, [1990] 3 F.C. 353, aff'd [1993] 1 F.C. 236; United States v. Hall, 472 F.2d 261 (1972); Madsen v. Women's Health Center, Inc., 114 S.Ct. 2516 (1994); New York State National Organization for Women v. Terry, 961 F.2d 390 (1992); Dayton Women's Health Center v. Enix, 589 N.E.2d 121 (1991); Roe v. Operation Rescue, 919 F.2d 857 (1990); Cornell University v. Livingston, 332 N.Y.S.2d 843 (1972); Jackson v. Bubela and Doe, [1972] 5 W.W.R. 80.

Statutes and Regulations Cited

Criminal Code, R.S.C., 1985, c. C-46, s. 11. Law and Equity Act, R.S.B.C. 1979, c. 224, s. 36.

Authors Cited

Sharpe, Robert J. Injunctions and Specific Performance, 2nd ed. Aurora, Ont.: Canada Law Book, 1992 (loose-leaf updated December 1995, Release 3).

APPEAL from a judgment of the British Columbia Court of Appeal (1994), 96 B.C.L.R. (2d) 201, 118 D.L.R. (4th) 1, 93 C.C.C. (3d) 289, [1994] 10 W.W.R. 705, 50 B.C.A.C. 100, 82 W.A.C. 100, 32 C.P.C. (3d) 11, affirming a decision of Hall J. (1993), 106 D.L.R. (4th) 556, granting an interim injunction. Appeal dismissed.

Gregory J. McDade, Q.C., David Boyd and J. Demarco, for the appellant Greenpeace Canada. A. Cameron Ward, for the appellant Valerie Langer. John J. L. Hunter, Q.C., and Peter G. Voith, for the respondent. Michael Frey, for the intervener.

Solicitor for the appellant Greenpeace Canada: Gregory J. McDade, Vancouver. Solicitor for the appellant Valerie Langer: A. Cameron Ward, Vancouver. Solicitors for the respondent: Davis & Company, Vancouver. Solicitor for the intervener: The Ministry of the Attorney General, Victoria.

The judgment of the Court was delivered by

McLACHLIN J.

1 This case raises the issue of the power of the courts to grant injunctions against members of the public engaged in protests that interfere with the private rights of others. Can the courts make orders against unidentified persons not named in the action or named only in proxy as "Jane Doe" and "John Doe"? Or must the persons enjoined be sued and named before an order is enforceable against them?

I. Facts

2 The appeal arises out of protests against the logging operations of the MacMillan Bloedel Forest Products Company on Vancouver Island in the Clayoquot Sound region of British Columbia. MacMillan Bloedel was engaged in harvesting trees on its properties in the Bulson Creek Watershed. Following a government decision to permit certain harvesting of old-growth forest, the logging of the Pacific Rain Forest in which MacMillan Bloedel and others were engaged became the focus of controversy. People opposed to the harvest of the forests mounted protests. One form of protest was to block public roads in order to prevent the logging trucks from sending cut logs out of the forest area.

3 MacMillan Bloedel took legal action to end these blockades. On September 17, 1991, it brought an action to restrain the protesters from blocking the roads on which it trucked its logs. It named as defendants the appellant Valerie Langer, four other named individuals, and "John Doe, Jane Doe and Persons Unknown", seeking damages for trespass, nuisance, intimidation, interference with contractual relations and conspiracy, as well as injunctive relief.

4 The day after its action was launched, MacMillan Bloedel proceeded to apply for and obtain an ex parte order enjoining "all persons having notice" of the order from impeding MacMillan Bloedel's logging operations on the Bulson Creek Watershed. In a series of subsequent applications the order was amplified, refined, and extended both in duration and to include other sites: Spencer J. added arrest and detention provisions on September 20, 1991; Bouck J. converted the interim injunction to an interlocutory injunction on September 25, 1991; Hamilton J. expanded the geographical scope of the injunction on June 30, 1992; following further protest activities in July 1992, Tysoe J. granted an interim injunction of one year's duration covering yet more territory; and on July 16, 1993, Esson C.J.S.C. extended the injunction to August 31, 1993. Public demonstrations escalated from July 5, 1993 onwards, with 56 persons ultimately being charged with contempt. Their trial was set for August 30, 1993.

5 On August 26, 1993, the application which gives rise to the order under appeal was brought. It came on before Hall J. He granted an interim injunction prohibiting the named defendants, as well as "John Doe, Jane Doe and Persons Unknown" and "all persons having notice of th[e] Order" from engaging in conduct which interfered with MacMillan Bloedel's operations at specified locations: (1993), 106 D.L.R. (4th) 556. He also extended the injunctions granted by Esson C.J.S.C. and Hamilton J. to August 31, 1994. The appellants appealed from this order. The British Columbia Court of Appeal dismissed the appeal, Wood J.A. dissenting: (1994), 96 B.C.L.R. (2d) 201, 118 D.L.R. (4th) 1, 93 C.C.C. (3d) 289, [1994] 10 W.W.R. 705, 50 B.C.A.C. 100, 82 W.A.C. 100, 32 C.P.C. (3d) 11 (hereinafter cited to B.C.L.R.). The appellants now appeal to this Court.

6 The injunction barred members of the public from blocking the Kennedy River bridge and authorized the police to remove offenders in the following terms:

AND THIS COURT FURTHER ORDERS that any persons attending at or near the Kennedy River Bridge during working hours of the Plaintiff and while vehicles are travelling along the travelled roadway in such area shall situate themselves off that roadway and shall not attend within fifteen feet of that roadway;

AND THIS COURT FURTHER ORDERS that any peace officer be authorized to arrest and remove any person who the peace officer has reasonable and probable grounds to believe is contravening or has contravened the provisions of this order;

7 The police arrested over 800 individuals during the summer and fall of 1993 for violating the interlocutory orders obtained by MacMillan Bloedel. The vast majority of the people arrested were not named as defendants in the Statement of Claim. Six hundred and twenty-six people were convicted of criminal contempt of court and sanctioned by fines of up to \$3,000 and jail terms of up to 60 days. The individuals arrested came from all parts of Canada and a number of other countries. The evidence establishes that before arresting a protester, the police followed the practice of handing the injunction to

the protester and then reading its contents to him or her. Upon this being done, most protesters peacefully left the blockade.

8 Throughout this period, the Attorney General of British Columbia followed a policy of not laying criminal charges against environmental groups or individuals engaged in civil disobedience, leaving it instead to the affected private parties to seek civil relief through the courts.

9 MacMillan Bloedel has not brought the main action on for trial. Its counsel did not suggest that it ever would.

The government policy has changed and the protests have died down. The injunctions have long since expired.

II. Judgments of the British Columbia Courts

10 Hall J. granted the order in terms similar to previous orders made in this matter by other justices of the Supreme Court of British Columbia.

11 The Court of Appeal upheld the order, Wood J.A. dissenting. The majority of the Court of Appeal was satisfied that the Supreme Court, as a court of inherent jurisdiction, had jurisdiction to make orders binding on non-parties and that the use of such power was justified to preserve the respondent's property rights in the face of mass obstruction. Wood J.A. dissented on the ground that court orders are binding only on named parties to the action, and that the epithets "John Doe, Jane Doe and Persons Unknown" did not make members of the public parties to the action. In his view, the proper remedy when mass action threatens to overrun private rights is for the Attorney General to enforce the criminal law.

III. The Issues

12 The appellants make one main point: the court, in the context of civil litigation between private parties, does not have the power to grant an injunction which binds non-parties or the general public. Nor can the problem be cured, in their view, by the use of terms like "John Doe", "Jane Doe" or "Persons Unknown". The appellant Valerie Langer argues that if the courts have the power to make orders against non-parties, it is not appropriate to include provisions authorizing the police to arrest and detain strangers to the litigation. Three issues, therefore, arise:

- (1) Do the courts have the power in the context of civil litigation between private parties to enjoin non-parties or members of the public from designated conduct?
- (2) If so, can such orders be made using terms like "John Doe" or "Jane Doe" or "Persons Unknown"?
- (3) If the courts can make such orders, is it appropriate to include in them provisions authorizing the police to arrest and detain strangers to the litigation?

IV. Analysis

A) Do the Courts Have Jurisdiction to Make Orders Binding on Non-Parties?

13 This case, like most, rests on a fundamental conflict. The conflict is between the right to express public dissent on the one hand, and the exercise of property and contractual rights on the other. Thus the

appellants are wrong in asserting that the orders in question are nothing more than "government by injunction" aimed at suppressing public dissent. The respondent is equally wrong in asserting that this case has nothing to do with the public expression of dissenting views and pertains only to private property. This case is about both. In a society that prizes both the right to express dissent and the maintenance of private rights, a way to reconcile both interests must be found. One of the ways this can be done is through court orders like the one at issue in this case. The task of the courts is to find a way to protect the legitimate exercise of lawful private rights while preserving maximum scope for the lawful exercise of the right of expression and protest.

14 At issue in this case is the power of the courts to use an injunction granted in private litigation to regulate or curtail public conduct. The protesters, members of the public, were blocking public roads. The injunction ordered them not to do so and provided for their arrest if they persisted. The submission of the appellant Greenpeace comes down to this: private parties cannot use the courts to curtail the activity of members of the public because private litigation is confined to named, identifiable parties. If members of the public violate the law, disturb the peace or interfere with the lawful exercise of private rights, it is a matter for the Attorney General to prosecute under the criminal law or seek an injunction in the public interest.

15 It is accepted by all that the British Columbia Supreme Court, as a court of inherent jurisdiction, possesses the power required to maintain the rule of law. More specifically, the broad power of the Court to grant interlocutory injunctions is confirmed by the Law and Equity Act, R.S.B.C. 1979, c. 224, s. 36, which provides for their grant "in all cases in which it appears to the court to be just or convenient that the order should be made ... on terms and conditions the court thinks just". Relying on these powers, MacMillan Bloedel argues that where a court of inherent jurisdiction has jurisdiction over a dispute or lis by reason of private litigation, it can make all orders necessary to preserve the rights of the parties, including orders against unknown persons where this is necessary to make the relief effective. Citing this Court's recent decision in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, MacMillan Bloedel argues that if the rule of law is to be maintained, it must not be deprived of an effective remedy. MacMillan Bloedel contends that the sole purpose of the injunction at issue was to remove the physical blockades that prevented it from exercising the property rights asserted in the action. Having made out a prima facie case that its property rights were being violated, MacMillan Bloedel takes the position that it was entitled to an interim order protecting those rights. An order going merely against named parties, i.e., those who had blocked the road in the past, would be ineffective because new people were arriving daily to participate in the blockades. Since the only effective way to protect its rights was, in MacMillan Bloedel's submission, by means of an order directed at unknown persons, it contends that the British Columbia Supreme Court had jurisdiction to grant the order sought.

16 Against this position, the appellants raise two arguments. The first is that the courts have no inherent jurisdiction to make orders against members of the public in criminal law matters. The second is that the courts have no jurisdiction to make orders against unnamed parties. I will consider each in turn.

(1) The Criminal Law Argument

17 The appellant Langer argues that there was no need for the B.C. Supreme Court to assume jurisdiction over unknown parties because an alternative remedy was available. MacMillan Bloedel's "most obvious" remedy, she submits, was to "prevail upon law enforcement officials to enforce the Criminal Code".

18 On a practical level, this remedy offered little assistance to MacMillan Bloedel in the summer of 1993. The Attorney General of British Columbia had a specific policy not to lay criminal charges against environmental groups engaging in civil disobedience, but to leave it to affected parties to seek injunctive relief. MacMillan Bloedel submits that it was precisely because the Attorney General was not acting that it needed the protection of an interim injunction.

19 Underlying the argument that the proper remedy lay in the criminal law is the proposition that, as a matter of law, it is for the Attorney General alone to decide whether and how to deal with conduct of a criminal nature. If the Attorney General decides that it is not in the public interest for the government to act, it is not open to a private party to enlist the aid of the courts to stop the conduct. The appellant Langer relies on *Robinson v. Adams* (1924), 56 O.L.R. 217 (C.A.), and *Gouriet v. Union of Post Office Workers*, [1978] A.C. 435 (H.L.), in support of this contention.

20 I cannot accept the appellant's position. The mere fact that conduct may be characterized as criminal does not deprive a person whose private rights are affected from seeking relief in the civil courts. *Robinson* and *Gouriet* deal with the narrower issue whether a person who asserts no private right has standing to advance the public interest without first obtaining the consent of the Attorney General. Where, as here, a private litigant's rights are affected by criminal conduct, there is no question that the litigant has such standing: *Sharpe, Injunctions and Specific Performance* (2nd ed. 1995 (loose-leaf)), c. 4; *Robinson*, supra; *Gouriet*, supra. More specifically, where criminal conduct affects property rights, the person so affected may invoke the equitable jurisdiction of the court to obtain an injunction prohibiting the conduct: *Sharpe*, supra, at p. 3-32; *Hurtig v. Reiss*, [1937] 3 W.W.R. 549 (Man. C.A.). *Sharpe* cites the following passage from *Boyce v. Paddington Borough Council*, [1903] 1 Ch. 109, at p. 114, rev'd, [1903] 2 Ch. 556 (C.A.), rev'd [1906] A.C. 1 (H.L.), as a classic statement of the right of a private individual to seek relief from criminal conduct in the civil courts:

A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with (e.g., where an obstruction is so placed in a highway that the owner of premises abutting upon the highway is specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway); and secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right. [Emphasis added.]

Section 11 of the Criminal Code, R.S.C., 1985, c. C-46, codifies this principle in unqualified terms: "No civil remedy for an act or omission is suspended or affected by reason that the act or omission is a criminal offence".

21 I conclude that the fact that the conduct of blocking the roads can be characterized as criminal does not deprive the British Columbia Supreme Court of the right to grant an injunction against potential offenders in a civil action.

(2) The Problem of Unidentified Persons

22 The second jurisdictional attack on the interim injunction is the assertion that the courts do not have the jurisdiction to make orders binding on non-parties. On this submission, an order can bind only parties

named in the action. Wood J.A. accepted this argument. In his view, it is "a principle fundamental to our notion of justice" (p. 231) that "the single-minded purpose of the modern day writ of summons and its ancestors has been to give the defendant notice of the proceedings against him, by virtue of which notice the courts then had jurisdiction to grant relief at the behest of the plaintiff" (pp. 231-32). Relying on English authority, Wood J.A. concluded that, absent a writ directed against an individual personally, the court lacks jurisdiction to make an order against that person.

23 I propose to consider this argument in two ways: first, from the perspective of the authorities, and second, from the perspective of the effect that such a rule would have on maintaining the rule of law in Canadian society. I turn first to the authorities. I conclude that while the relevant principles have been articulated somewhat differently in England and Canada, the practical effect is the same: in both countries, non-parties who violate injunctions may be found in contempt of court. Hence, non-parties may be seen as being, if not technically bound by the order, bound to obey the order. The same rule, it will be seen, has been accepted in other countries with legal systems similar to our own.

24 It is important at the outset to keep one distinction firmly in mind, as the failure to do so led to some confusion in the submissions before us. I refer to the distinction between the question whether an order may refer to classes of unnamed persons, and the quite separate question whether an order can bind persons not party to the litigation.

The first is a procedural question, a matter of pleading. The second is the real question raised by the dissenting opinion of Wood J.A. It is with the second question that I am concerned at this point.

25 The argument that the jurisdiction of the courts is confined to parties named and served in the action rests on the notion that the courts can act only in personam; that is, against named individuals. In *Marengo v. Daily Sketch and Sunday Graphic, Ltd.*, [1948] 1 All E.R. 406 (H.L.), Lord Uthwatt cited *Iveson v. Harris* (1802), 7 Ves. 251, 32 E.R. 102, at p. 104, for the proposition that a court is not competent "to hold a man bound by an injunction, who is not a party in the cause for the purpose of the cause". He went on to say (at p. 407):

The reference to servants, workmen, and agents in the common form is nothing other than a warning against wrongdoing to those persons who may by reason of their situation be thought easily to fall into the error of implicating themselves in a breach of the injunction by the defendant. There its operation, in my opinion, ends.

The traditional English rule thus appears to be that only named parties can be bound by a court order. While general terminology referring to others may be included in the order, this is done only to capture the idea that the named party -- often a corporation -- is enjoined from committing the specified act both directly and through the actions of others, such as servants and agents, whom it may direct. The general terminology also serves to provide a warning to third parties who might otherwise implicate themselves in a breach of the order.

26 If third parties are not bound by an order, it would seem logically to follow that they cannot personally be held responsible for breaching it. Nevertheless, the English courts accept that non-parties may be held guilty of contempt for violating court orders. The House of Lords has recently confirmed that a person not named in an order may be held in contempt of court for doing the act prohibited by the order, even when acting independently and not aiding or abetting the named defendant: *Attorney-General v. Times*

Newspapers Ltd., [1991] 2 W.L.R. 994 (H.L.); see also *In re Supply of Ready Mixed Concrete*, [1991] 3 W.L.R. 707 (C.A.), at p. 718. In this sense, it may be argued that the English authorities, despite an apparent rule to the contrary, in fact hold that injunctions are binding on persons other than the parties to the action.

27 How is the fact that non-parties can be found guilty of violating court orders and sent to prison therefor to be reconciled with the assertion of the English authorities that only parties to the litigation can be bound by court orders? On the level of theory, these apparently contradictory positions are reconciled by the distinction between being bound by an injunction as a party to the action and being guilty of contempt of court by obstructing justice. Only parties are "bound" by the injunction. But anyone who disobeys the order or interferes with its purpose may be found to have obstructed the course of justice and hence be found guilty of contempt of court. Thus in *Seaward v. Paterson*, [1897] 1 Ch. 545 (C.A.), Lindley L.J. wrote (at p. 555):

A motion to commit a man for breach of an injunction, which is technically wrong unless he is bound by the injunction, is one thing; and a motion to commit a man for contempt of Court, not because he is bound by the injunction by being a party to the cause, but because he is conducting himself so as to obstruct the course of justice, is another and a totally different thing.

28 On the level of practice, the distinction seems to be a distinction without a difference since in either case, a person not named in the action who violates the injunction may be brought before the courts, tried, and penalized. The difference vanishes in the Canadian context where the practice is to charge non-parties with contempt rather than for violating the injunction. In the case at bar, for example, the 626 people convicted under the various injunctions were convicted not of violating the injunction, but of criminal contempt.

29 It thus emerges that Wood J.A. correctly asserts the existence of the English rule that injunctions bind only parties to the action. The assertion, however, is of little consequence because third parties who violate or interfere with the injunction may be prosecuted for contempt of court. The case at bar does not raise the issue whether non-parties are bound by an injunction in the technical sense discussed by Wood J.A.; it does raise the issue whether non-parties can be found in contempt of court for violating an injunction. On the English authorities, the answer to that question is indubitably affirmative.

30 Canadian judges considering the problem of mass violations of private rights have made less of the distinction between being bound by an injunction (confined to parties) and being bound to obey an injunction (not confined to parties). In *Bartle & Gibson Co. v. Retail, Wholesale and Department Store Union, Local 580*, [1971] 2 W.W.R. 449 (B.C.C.A.), Tysoe J.A., considering a submission that non-parties should not be described in an order, stated (at p. 455):

I find it a little difficult to understand why, if it is true -- and it is, of course, quite true that persons who, with knowledge of an order, take any steps to assist in contravening it, may be proceeded against for contempt of court -- why the order should not provide that it covers somebody who, having knowledge of the order, disobeys it.

A similar recognition that anyone who violates a court order, whether a party or not, may be charged with contempt of court seems to underlie the comment of Estey J., speaking for this Court in *International Longshoremen's Association, Local 273 v. Maritime Employers' Association*, [1979] 1 S.C.R. 120, at p. 144:

However [language enjoining non-parties] has, for many years, been adopted in these injunctions ... no doubt for the good reason that it makes the impact and sense of the order clear to all those likely to be affected thereby and, in any event, such wording can hardly be said to harm any of the persons in law affected by the order. [Emphasis added.]

In other words, since persons other than named parties may be affected by the order, and be held in contempt for violating it, it makes good sense to use language which alerts those people to that risk. More recent English authority suggests that courts there, too, may be coming to see the practical value of such an approach. Thus, in *Attorney General v. Newspaper Publishing plc*, [1987] 3 All E.R. 276 (C.A.), at pp. 314-15, Balcombe L.J. commented that in an appropriate case it may be "preferable" for the court to make its initial protective order in terms which make it clear to members of the public who may be affected by the order that they also are required to obey it.

31 It may be confidently asserted, therefore, that both English and Canadian authorities support the view that non-parties are bound by injunctions: if non-parties violate injunctions, they are subject to conviction and punishment for contempt of court. The courts have jurisdiction to grant interim injunctions which all people, on pain of contempt, must obey. The only issue -- and one which has preoccupied courts both in England and, to a lesser extent, here -- is whether the wording of the injunction should warn non-parties that they, too, may be affected by including language enjoining the public, or classes of the public, from committing the prohibited acts. On this point I share the view of Tysoe J.A. in *Bartle & Gibson*, *supra*, and Estey J. in *International Longshoremen's Association*, *supra*: if members of the public may be bound to respect court orders in private suits on pain of being held in contempt, it seems appropriate that the order apprise them of that fact.

32 It remains to consider a final argument raised by the appellants. Underlying both their submissions and the dissenting reasons of Wood J.A. is the suggestion that it is improper to use private litigation for the sole purpose of obtaining an injunction to constrain public action. Hence the emphasis on the fact that MacMillan Bloedel's main action against the named defendants has never proceeded to trial. Having given this concern my most serious consideration, I conclude that it provides no basis for invalidating the order made in this case. MacMillan Bloedel sued and named as defendants five persons identified at the first blockades. MacMillan Bloedel was entitled to claim against them such relief as the law allows. Although it contented itself with obtaining interim injunctions, MacMillan Bloedel could have proceeded to trial to obtain permanent injunctions and damages against them. The fact that it chose not to pursue the fullest remedy available is not a basis for denying it any other relief allowed by law. The interlocutory injunctions obtained against the named defendants for blocking the logging roads also bound members of the public at large. There is nothing new in this. Canadian courts have for decades followed the practice of issuing orders directed at prohibiting interference with private property rights, which orders affect not only the named parties but also the general public.

33 For the purposes of this case, it is unnecessary to go further. I note, however, that where a final injunction is in issue, some cases suggest that caution should be exercised in including non-parties in the terms of the order: *Sandwich West (Township) v. Bubu Estates Ltd.* (1986), 30 D.L.R. (4th) 477 (Ont. C.A.); see also *Marengo*, *supra*. Subject to this caveat and other considerations bearing on the special circumstances of the case, the proposition that the courts possess inherent jurisdiction to issue injunctions to restrain large-scale public action violative of private rights enjoys wide recognition. See the following: *Ontario Hydro v. Johnson* (1985), 1 C.P.C. (2d) 234 (Ont. H.C.); *Morgentaler v. Wiche*, [1989] O.J. No.

2582 (H.C.); Ontario (Attorney General) v. Dieleman (1994), 20 O.R. (3d) 229 (Gen. Div.), at pp. 333-36; Griffin Steel Foundries Ltd. v. Canadian Association of Industrial, Mechanical and Allied Workers (1977), 80 D.L.R. (3d) 634 (Man. C.A.), at p. 644; Montres Rolex S.A. v. Balshin, [1990] 3 F.C. 353 (T.D.), at pp. 365-67, aff'd with a variation of the order, [1993] 1 F.C. 236; United States v. Hall, 472 F.2d 261 (5th Cir. 1972), at pp. 265-66; Madsen v. Women's Health Center, Inc., 114 S.Ct. 2516 (1994); New York State National Organization for Women v. Terry, 961 F.2d 390 (2d Cir. 1992), at pp. 397-98; Dayton Women's Health Center v. Enix, 589 N.E.2d 121 (Ohio Ct. App. 1991), at pp. 125-26; Roe v. Operation Rescue, 919 F.2d 857 (3d Cir. 1990), at p. 871; see also Cornell University v. Livingston, 332 N.Y.S.2d 843 (Sup. Ct. 1972), at p. 848.

34 Having considered the authorities, I turn to the practical consequences of ruling that courts cannot issue injunctions which non-parties are required to respect. Wood J.A., having concluded that the courts have no such authority, was required to face this problem. He wrote (at p. 248):

Can the courts stand by and watch helplessly when the private rights of the individual are overrun by the mob? Should we turn our backs on the person who looks to us for help in such circumstances over an issue so apparently technical as jurisdiction? If there were no alternative solution to that individual's dilemma, I would be quick to answer "no" to both questions. The progress of the law is an ever-evolving journey which must respond to new challenges lying within its path. Much of the jurisdiction which the Supreme Court exercises today was born out of just such necessitous circumstances.

However, in my view there is an alternative solution. It lies in the proper discharge of the obligations which attach to the office of the Attorney General.

Wood J.A. went on to state that it is "the responsibility of the Attorney General as the chief law enforcement officer ... to see to it that the criminal law is enforced" (p. 249).

35 Every citizen would endorse these words. Yet, as this case demonstrates, to state the obligation of the Attorney General is not to ensure that it will be discharged in such a way as to provide the required protection to citizens injured by the conduct of others. It is to fill this gap that the equitable remedy of injunctions -- injunctions which not only the parties but also all others must respect on peril of being found in contempt of court -- has developed.

36 What then of the other side? What are the dangers of empowering the courts to make orders to protect private interests which all must obey on pain of contempt? It is fundamental that no state founded on the rule of law can permit members of the public to be detained and punished for violating an order of which they are ignorant. If members of the public are to be charged with obstruction of justice for having disobeyed an injunction, they must first be apprised of the existence and terms of the order and be given an opportunity to comply. That is precisely what was done in enforcing the injunctions here. Before a protester was arrested, he or she was handed a copy of the order and its terms were read to him or her. The protester was then asked to quit the blockade. Most complied. Only those who refused were arrested. It is also desirable, as this Court suggested in *International Longshoremen*, supra, that the order's terms speak of the duty of non-parties to respect it. This, too, was done here. Finally, it is necessary that the orders be carefully worded and constrained to ensure that they are fair and not unduly broad. This requirement, too, was met in the case at bar. Over the months, a number of justices reviewed and amended the terminology of the injunctions to make them clearer and fairer. For example, in July 1993, Esson C.J.S.C. removed

language enjoining "creating a nuisance" -- legal language which some members of the public might not have understood -- and replaced it by more precise language specifying that what was prohibited was "physical" obstruction. Words could be used, signs could be paraded; what could not be done was to physically block the road.

(3) Summary on Jurisdiction

37 I conclude that the British Columbia Supreme Court had jurisdiction to make orders binding on persons who are not parties to the action.

B) Suing Unnamed Persons

38 The second issue is whether the use of terminology such as "John Doe", "Jane Doe" and "Persons Unknown" in the style of cause invalidates the order. The appellants argue that these terms represent an attempt to sue the general public, and that such terms are not justified under the British Columbia Rules of Practice and the principles developed under the Rules.

39 The practice of using terms like "John Doe" is directed at permitting a plaintiff to sue a person whose name the plaintiff does not know: *Jackson v. Bubela and Doe*, [1972] 5 W.W.R. 80 (B.C.C.A.). Under the British Columbia Rules, the procedure for objecting to such an appellation is to apply to have the terms struck out. Alternatively, an application by the plaintiff to have the defendant's name substituted for "John Doe" for the purpose of obtaining relief against him may be dismissed if the use of the "John Doe" designation is found to have been inappropriate. We have been referred to no authority suggesting that an order made under a valid action is invalid because the style of cause of the action included a reference to "John Doe, Jane Doe and Persons Unknown".

40 In fact, the use of "John Doe, Jane Doe and Persons Unknown" in the present action appears to be surplusage. As discussed above, a person who is not a party to an action is bound to respect an order made in the action, on pain of being found in contempt of court. This was the procedure used to enforce the order here at issue. None of the protesters was charged or sued as a party to the action. So the question whether relief may be obtained against them in the action on the basis of having sued them as "John Doe, Jane Doe and Persons Unknown" never arose. Accordingly, it is unnecessary for this Court to decide whether, as a matter of pleading, the use of these terms in the style of cause could validly engage members of the public served with the writ.

C) Provisions Authorizing Arrest and Detention

41 The appellant Valerie Langer has questioned the appropriateness of including a provision authorizing the police to arrest and detain persons breaching the injunction. She argues that no authorization or direction from the court is necessary to enable the police to act. The respondent accepts that the authorization is superfluous, and states that it is included only because the police have requested such wording. No objection to this term was made before Hall J. and it is not suggested that it vitiates the order. In these circumstances, this Court need not consider it further. I observe only that the inclusion of police authorization appears to follow the Canadian practice of ensuring that orders which may affect members of the public clearly spell out the consequences of non-compliance. Members of the public need not take the word of the police that the arrest and detention of violators is authorized because this is clearly set out in the order signed by the judge. Viewed thus, the inclusion does no harm and may make the order fairer.

V. Conclusion

42 I conclude that the British Columbia Supreme Court has jurisdiction to make orders enjoining unknown persons from violating court orders. Such orders are enforceable on the long-standing principle that persons who are not parties to the action, but who violate an order of the court, may be found guilty of contempt for interfering with justice. Provided that contempt is the only remedy sought, it is not necessary to join all unknown persons in the action under the designation, "John Doe, Jane Doe and Persons Unknown". Nor, strictly speaking, is it essential that the order refer to unknown persons at all. However, the long-standing Canadian practice of doing so is commendable because it brings to the attention of such persons the fact that the order may constrain their conduct. Similarly to be commended is the practice followed by the courts in this case of ensuring that the wording of the orders is clear and that their effect is properly circumscribed.

43 I would dismiss the appeal with costs.

ZEXI LI

- and -

CHRIS BARBER, BENJAMIN
DICTER, TAMARA LICH, PATRICK KING and
JOHN DOES 1-60

Plaintiff (Moving Party)

Defendants (Responding Parties)

ONTARIO
SUPERIOR COURT OF JUSTICE

MOTION RECORD
Motion for Interlocutory Injunction
(Motion returnable February 16, 2022)

CHAMP & ASSOCIATES
Equity Chambers

[REDACTED]

: Paul Champ
LSUC#: [REDACTED]

[REDACTED]

Solicitors for the Plaintiff